Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

THE ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED WITH DILIGENCE AND CARE BY VICTOR PIAZZESI, DOCTOR OF BOTH LAWS. The Acts of both Laws, or the more formal and solemn acts emanating directly from the Supreme Pontiff: these include those acts which can be made public under the law, whether they are Decrees, Instructions, Responses, or other similar matters; especially, the expositions and resolutions of cases from the various Sacred Congregations, diligently compiled to contribute to the accurate understanding and observance of ecclesiastical law: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of the existing law, for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard. ROME, FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1895-96. Reprinted with the permission of the Libreria Editrice Vaticana. JOHNSON REPRINT CORPORATION. JOHNSON REPRINT COMPANY LTD. 111 Fifth Avenue, New York, N.Y. 10003. Berkeley Square House, London, W1X6BA.

[*Latin ed. p. 3*]

3 Letters from His Holiness Pope Leo XIII to the Reverend Father Franciscus Picard, Prefect of the Augustinian sodality of the Assumption, in which their work in stirring up the Orient to restore unity with the Catholic Church is commended. Beloved Son, greetings and the Apostolic blessing. — Knowing that, with God's help and grace, the Eastern peoples may return to their former dignity within the Catholic Church, We have considered with pleasure the efforts of the Religious Orders which have diligently and fruitfully labored for this cause for a long time. Among these, praise is also due to that sodality, which you rightly direct. We know of the many concerns that you have undertaken in those regions; and these are all the more fruitful, the more they are commended with zeal for the glory of God and with fraternal charity towards those who are separated. — Indeed, no argument seems to us more convincing, nor more pleasing to you, than if the benefits of your efforts and studies could be extended more widely for the good of the Orient. And this pleases Us greatly; indeed, We are especially moved by the purpose of ensuring that both the ancient liturgical discipline be maintained among them, and also, which is of great importance to the cause We are promoting, that a sound and appropriate institution for young people be established. For this purpose, We have decided that the houses which you have in the city of Constantinople, near Stamboul, and on the other hand, near Kadi-Keui, where Chalcedon was, should be expanded with new buildings; that is to say, so that places are

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provided, suitable either for divine worship or for teaching in general. — In carrying out these plans, you must observe two guidelines. The first is that, in addition to the spiritual administration which We entrust to you, you should also administer to the Latins, and that you should take care that the solemn services are properly and decorously performed according to both rites separately. The second is that, for the benefit and improvement of the young people, you should not only cultivate their minds with customary studies, but also with instruction in the Greek language and the history of their homeland. Those whose character and will give good hope for the sacred ministry will have a greater share of your care, so that they may be more thoroughly instructed in piety, doctrine, and their own rites; for it is the greatest help in achieving our goals to properly train the native clergy. Everything that is necessary for this to be established according to legitimate law has already been provided by Us. In the meantime, take courage from...

[*Latin ed. p. 4*]

These Letters express Our benevolence and confidence; they are a declaration of divine will: and may you continue, and ever increase, to demonstrate the exceptional obedience which you have already shown to this Apostolic See. With such intentions and with such zeal guiding your efforts, God will certainly be propitious and will grant His fruitful help; and those who, striving for this goal, offer generous contributions will assuredly find abundant support for their endeavors. May the Apostolic blessing, which We impart to you, beloved son, and to the entire Association in the Lord, be a favorable omen. Given in Rome, at Saint Peter's, on the second day of July, in the eighteenth year of Our Pontificate. LEO XIII, POPE.

LETTERS of the Most Holy Lord N. Leo XIII to the Ordinaries of Belgium concerning the social question. Moved by a particular benevolence towards your nation, and at the request of many citizens, We have turned Our attention to the concerns of the Catholics of Belgium in this important matter. You understand perfectly what We intend: namely, the social question, which is agitating minds so intensely that it seems to demand relief and attention from Us. This is a difficult matter in itself, and it involves greater difficulties in your country; nevertheless, We have not hesitated to address it, since it is closely connected with religion and with the necessary fulfillment of Our office. For We have long been pleased to provide, in this very area, documents of Christian wisdom, adapted to the times and customs. It is also pleasing to recall the not insignificant progress made and the benefits derived by individuals and by the nation, and We hope that this progress will continue to grow. Even among the Catholics of Belgium, whose zeal for promoting such institutions has been particularly keen, the results have been gratifying; although, perhaps, not entirely in proportion to the just expectations, especially considering the favorable conditions and

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the character of the people. What has hindered the matter is sufficiently known. For when those, even with good intentions, begin to introduce their own ideas and methods in these matters, it happens that neither the desired benefits can flow forth, nor can the complete harmony of Catholics be maintained. — We are very sorry to see this example of discord, which is new and not of good omen.

[*Latin ed. p. 5*]

To the five bishops among the Belgian Catholics; who have always been a shining example of happy spirits and fruitful communion. Indeed, as we recall events not long past, this is clearly demonstrated in the matter concerning the schools. For when Catholics of every order, having achieved a certain admirable harmony of wills and active virtue among themselves, benefited most from this concord, with dignity to the religion and the salvation of the young. Truly, Venerable Brothers, you yourselves see how easily your flocks, divided in their minds, are prone to fall into public and private offenses; you see how urgently it is necessary to remedy these matters. And we, knowing well with what zeal you strive to restore and strengthen concord, we call upon you especially to fulfill this office, which is so glorious for a bishop and so sacred: whose certain outcome is indeed suggested by the very reverence with which it is deservedly offered to your dignity and virtue. Therefore, it seems best, and we strongly commend it to you, that you convene together in a meeting, as soon as possible. In that meeting, by exchanging opinions among yourselves, you will be able to explore the matter more thoroughly and completely, and to deliberate on better measures for its resolution. For this matter, indeed, presents itself rightly to those who consider it carefully. It pertains to external goods, but above all to religion and morals, and it is also spontaneously linked to civil law: so that, in the end, it extends to the rights and duties of all orders. Furthermore, the evangelical principles of justice and charity, which we recall, when transferred to the matter itself and to the practice of life, must touch upon many private concerns. To this are added certain conditions, specific to the Belgians, of landowners and craftsmen. These are certainly matters of great importance and counsel, in which the wisdom and diligence of you, Venerable Brothers, are required; and we will not fail to offer you our counsel in this present matter. Thus, after the meeting, it will be less burdensome and safer for you to determine remedies and measures suitable for the people and places in your respective dioceses. However, these very measures, directed by you, with the help of suitable citizens, must be able to be effective among the Catholics of the entire nation; so that the action of Catholics, with the same beginnings and the same...

[*Latin ed. p. 6*]

6. Let the writings be disseminated as widely as possible, so that

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everywhere they may be explained, and thus may contribute to both virtue and strength, and abound in solid benefits. It is certain that this will not be achieved according to our wishes, unless Catholics, which we most earnestly urge, set aside their own opinions and studies, and strive solely for whatever appears to truly contribute to the common good. That is to say, let religion excel in honor, and let its inherent virtue be spread, and let it be wonderfully beneficial to civil, domestic, and economic affairs: let the realm, protected by public authority and freedom, by Christian customs, by concord, and guarded against sedition, remain safe in peace: let the institutions of the state, especially the schools for young people, be improved; and let commerce and the arts, especially with the help of societies, which are numerous and of various purposes among you, be increased and promoted, provided that they are under the auspices and protection of religion. Furthermore, it is essential to ensure that due respect is paid to the highest divine laws, which ordained in the community of the human race a distinction between classes, and a certain equality among them, through friendly cooperation: so that neither artisans should be exploited by their patrons in any way, nor should anything be lacking from the just goodness and provident care of those patrons towards them. – These are the principal matters that constitute the common good, to which efforts must be devoted: hence, support is provided for the mortal condition of life, and merits are prepared for eternal life. If Catholics insist more diligently on the discipline of Christian wisdom and strengthen it with their example, it will also be easier to achieve what we hope for: that those who, having strayed from the path of justice and truth, were deceived by false opinions or a deceptive appearance of things, may seek the protection and guidance of the Church, recovering their senses. Surely, no one will be a true Catholic, and devoted to his country, who does not willingly acquiesce and fully obey the considered judgment of your prudence; and we are thoroughly convinced that the best advancements in all things, if introduced gradually and moderately, will be more beneficial and contribute more to stability. – Meanwhile, since the inconvenience we lament is so great that it does not allow for delay, we urge that this very thing be undertaken, beginning with the calming of minds. Therefore, Venerable Brothers, we exhort and urge Catholics in our name, that they now begin to address these matters, either through sermons or through newspapers or similar writings, putting aside all controversy and disagreement among themselves.

[*Latin ed. p. 7*]

Let them entirely abstain from contention, and, moreover, let them spare mutual reproach, and let them never presume to obstruct the judgment of legitimate authority. Then, indeed, all may strive with united hearts and fraternal zeal to contribute, as much as they can, to the desired outcome of

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affairs: and let the Clergy, who are most concerned to be cautious regarding new opinions, endeavor to mitigate passions and reconcile minds, and to remind [them] of the duties of a Christian citizen. We have long embraced the people of Belgium with singular charity and care; and, in return, many testimonies of obedience and piety have been offered by that people, in whose hearts the ancient religion burns brightly. Therefore, these exhortations and commands, which We have wished to confirm with the same purpose, leave no doubt that Our Catholic children will receive them most devoutly and carry them out faithfully. For, indeed, it would never happen that, when, through the long-standing praise of their concord, they publicly enjoy the state of religion which a single nation desires to be greater than any other, they would appear to diminish and undermine it themselves through their own discord. Rather, let them act with the utmost diligence to direct all their counsel and strength against the wickedness of Socialism, from which great evils and harms are clearly impending. Indeed, that [Socialism] ceaselessly strives to disturb both religion and the state; it mixes human and divine laws, and daily seeks to undermine the benefits of evangelical providence. This great calamity has often been severely denounced by Our voice; as is sufficiently testified by the prescriptions and warnings which We have included in these Letters concerning new affairs. Therefore, all good men should direct their minds to this, without any distinction of parties, so that, rightly defending Christian truth, justice, and charity, they may uphold the sacred interests of God and the state, from which public salvation and happiness spring forth. It is fitting that We should place our trust and expectation in your council and prudence; therefore, imploring divine aid for you, We impart the Apostolic blessing upon yourselves, and upon the clergy of each diocese, and upon the entire people.

Given at Rome, at St. Peter's, on the tenth day of July, in the year 1837, in the eighteenth year of Our Pontificate.

LEO XIII, POPE.

[*Latin ed. p. 8*]

8. LETTERS. Letters from His Holiness Pope Leo XIII to the Superior of the Society of Jesus, concerning the promotion of the Catholic cause among the Copts. We are pleased to learn that the students of your Society are proving to be faithful administrators, as we have already testified in a recent letter to them. However, we wish to confirm this to you in our own words, after having received from you a more detailed account of the progress of religion in that nation. We were greatly pleased to learn of the steadfastness of the Catholics in their faith, and of the fruitful virtue of their lives, as well as of the willingness of those who are separated, which is increasingly evident and is having a positive effect in the restoration of unity.

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And since the Coptic region appears to be among those in which Christ has already sown the seeds of the Gospel, we spontaneously offer our prayers to the Lord, that He may provide workers for His harvest, in accordance with His own plans. For three years now, the members of your Society, spurred on by our encouragement and by the urgent demands of charity, have eagerly gone to those lands. Their arduous and constant labors, especially in Upper Egypt, have yielded very good results, particularly with regard to the proper training of the native clergy, and to the progress and flourishing of Christian life among the people. For these things, we give thanks to God with all due reason, and we acknowledge and rejoice in the further benefit that we know flows from them, namely, the effective drawing of many souls into the bosom of the Catholic Church. However, it must be acknowledged that external sects are hindering or delaying this progress with great vigor; for, with worldly prudence and abundant resources, they establish schools in those very places, and multiply similar attractions, inviting people to danger and harm to their faith. Certainly, if it were possible for our efforts to counteract the efforts of our adversaries with greater force, it would greatly contribute to the happy progress of our endeavors. Aware of this need, which requires much labor, we offer you, dear son, a timely source of hope: consider how diligently your members are striving to increase the number of those who receive a completely safe and wholesome education, as they grow older. And so, increase—

[*Latin ed. p. 9*]

9. There is great hope, because some of the most distinguished members of the Coptic nation, as we have learned, have generously and piously contributed resources to support schools and to build sacred buildings; and, moved by their example, others will undoubtedly readily join in these benevolent endeavors. We, too, intend to contribute as much as we are able; and for that reason, we will ensure that a certain sum of money is sent to you, which you may appropriately distribute to the members of your Society in those very works.

These contributions, and those which we hope to be able to provide in the future, we also wish to be regarded among the Coptics as testimonies of special providence and benevolence, which they themselves, through their piety and trust, have earned and will continue to earn. For it has been reported that the hearts of the people have been greatly stirred by the documents which we presented in our recent letter; and it is expected that, in the coming months, a delegation will come from there to us, to testify before us of their common will for obedience and grace. This, indeed, brings us great joy; not only for the sake of Catholics, but also, and perhaps even more so, for the sake of those who are separated, for whose salvation a more fervent spirit of religion and charity will certainly be of great benefit. Furthermore, from these circumstances, it becomes clear that those who

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believe that the reconciliation of the Easterns, which is sought, will have a promising beginning with the Coptics, are not entirely mistaken. You see, beloved son, the vastness of the field into which God has called your Society to work; and you easily understand how much virtue, strength, perseverance, and tireless effort are required. Therefore, encourage your members, using your wisdom and prudence, and relying on God, not to desist. But you have already bravely faced difficulties and accepted labors for the sake of the holy and eternal Church and the salvation of the people; and the Divine Father inspires new flames of divine glory in his children from heaven.

Now, to you, esteemed protector of such excellent benefactions, we impart the Apostolic Blessing, which we bestow with paternal affection upon your entire Society, and especially upon the members of your Society who are devoted to the cause of the Coptics. Given at Rome, at Saint Peter's, on the 31st day of July, in the year 1837, in the eighteenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 10*]

10. FROM THE HOLY CONGREGATION OF THE COUNCIL OF HISPALE [Seville]. REGARDING PAROCHIAL JURISDICTION. Dated January 26, 1895. Session 24, chapters 13 and 18, concerning reform. In the archdiocese of Hispale, even after the Council of Trent, the pastoral ministry was exercised, even after the Council of Trent, by beneficedaries and chaplains, sometimes removable, by order of the Archbishop, to whom the general care of souls belonged. See Holy Regulations, Decree 128, no. 5, paragraph 7; and Decree 397, no. 3, paragraph 19, volume 1, Recent. Archbishop De Lianes, desiring to introduce the discipline of Trent, decreed in the year 1791 that, in the future, benefices should be conferred through competition, and that those who obtained a benefice should, by their own right and perpetually, exercise their office. And when the churches were lacking, he established that in one and the same church, two, or more, pastors should be instituted, who would have a distinct flock, with distinct boundaries, but in the same church, and it seems, by turns, would perform the pastoral functions, having begun with mutual agreement, so that one would not be an impediment to the other. Examples of this discipline are not lacking in other dioceses of Spain, for example, in the dioceses of Oriola and Derthon. It is fitting to quote some passages verbatim from the aforementioned decree of Archbishop De Lianes: "All perpetual and collated pastors are constituted, as was established by the Council of Trent. Their provision will be made through strict competition. Since in various churches of this archdiocese, two, three, and more pastors have been established, according to the inhabitants of each place and with regard to labor and service, of whom some reside in the vicinity as assistants, the curacies, which are now being established, will be adapted in a more suitable man-

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ner." SUMMARY OF THE MATTER.

[*Latin ed. p. 11*]

SEVILLE. The present arrangement of the diocese is maintained, and, as far as possible, with due regard to the circumstances, in accordance with what is established by the Holy Council of Trent. The practice of distributing parishes according to the census of souls is to be observed in those churches where two or three pastors are maintained; and where the number of pastors is increased or decreased, and two or more remain, a new distribution will be made, with our approval, as it may seem more expedient. In the city commonly called Jerez de la Frontera, the Church of Saint Michael was one of those to which several pastors were assigned. Furthermore, there were three pastors and a permanent vicar established in it, each assigned a distinct portion of the faithful. This arrangement was in force in the archdiocese when the Concordat between the Holy See and the Queen of Spain was initiated in the year 1851, and in article 26, it was agreed: "Provision will be made publicly, without any exception whatsoever, for all parishes, with respect to places, classes, and the time of vacancies; observing the norm prescribed by the Holy Council of Trent; and formed by tertiaries chosen from those present, approved by the Ordinary, and presented to Her Majesty, so that she may be able to nominate from among those proposed." In the year 1859, another agreement was entered into, of which the seventeenth paragraph is as follows: "The new division of parishes will proceed immediately, in accordance with the understandings and agreements already reached between the two powers." However, this arrangement was not immediately put into effect, because time and consideration were needed in order that a new and proper division of parishes could be made. Therefore, in the year 1865, after preliminary consultations, the Archbishop of Seville proposed to the Government, for each of the three approved positions for a parish benefice in the Church of Saint Michael in the city of Xeres, according to the division made by Archbishop de Lianes, that the Queen nominate one for the purpose of the Concordat of the year 1851. The Government responded to the presentation of two or three pastors, stating that only one should be nominated. The Archbishop did not give up, but appealed to the Council of State, and obtained a favorable decision.

[*Latin ed. p. 12*]

12. In Hispalensis, where it was asserted that all were truly parochial benefices, each of which, by its own institution, represented a single parish, and which appeared to be entirely independent, although for practical matters they served in the same church; but in order that they might be suppressed, an absolute prior canonical process would have been necessary, which, indeed, did not occur. The Government adhered to this opinion,

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established the customary pension for the parish priests, but ordered that, as soon as a new delineation of the parishes was made, the least necessary ones should be suppressed. The Archbishops of Hispalensis, Cardinals Lluch and Gonzalez, took action according to the rules of common agreement between the Apostolic Nuncio and the Ministers of the Crown; the present one also proposed his own plan (arreglo paroquial), but it has not yet taken effect and remains with the Government. Of the three named and instituted in the church of St. Michael, the one who held the second benefice died in 1874; the third was promoted in 1875; the first, namely Joachin Yuste, died in 1879. After these vacancies, the Ordinary appointed vicars, to whom he granted the same faculties and rights as to the parish priests. But the Government refused to recognize them as such, maintaining that there should be only one parish priest in each church, and assigned them a smaller pension as coadjutors. These matters must be understood before proceeding, and they are the very essence of the question. In 1888, the Ordinary of Hispalensis published a general edict, in which he announced a competition for all vacant parishes, among which was the parish of St. Michael in the city of Jerez de la Frontera. The edict stated that the competition would not be announced for benefices held by vicars, where there were multiple parish priests in the same church; and that the vicars would retain all their rights and faculties. It was stated that, for the present, this competition would not be announced for them.

[*Latin ed. p. 13*]

SEVILLE. To prevent the current administrators of these parishes, and those who may be appointed to such office in the future, from faithfully fulfilling their duties, according to our will, with all the rights and privileges they enjoy by law and custom. Among those who faced the danger of a dispute concerning the parish of St. Michael, was the deacon, Reverend Salvator Castilla y Rodríguez, who, having been approved and proposed along with two others to the Government, was selected and appointed by it; and to him, the Ordinary granted the vacant curacy through the death of the late Lord Joachim Yuste, its last possessor. Reverend Castilla, upon entering into possession, acted in a manner contrary to all propriety. He declared the administrators and the vicar to be independent; claiming to be the sole parish priest, and asserting that the others, his assistants, were devoid of any parochial jurisdiction. He began to obstruct their functions, and went so far as to deny them the portion of the emoluments that was rightfully due to them, which had been distributed according to ancient practice and agreement. When the administrators repeatedly protested, the Ordinary, once and again in writing, warned Parish Priest Castilla to cease the disturbance; to recognize the rights of the administrators; to observe the discipline established by law and confirmed in the edict concerning the competition; until a new arrangement of the parishes was brought to

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completion. However, Reverend Castilla refused to obey, claiming that the discipline of the Archdiocese of Seville was uncanonical in this matter; asserting that he was the defender of the sacred canons, and that the decrees of the Archbishop had no validity, and that he was the sole parish priest in the church of St. Michael, and that no one could infringe upon his rights. Furthermore, he wrote to the Apostolic Nuncio and to the Ministers of the King, demanding that it be solemnly declared that the right of private ownership belonged to him concerning everything; but he received a reply stating that nothing should be changed until a new arrangement of the parishes was made. Nevertheless, Reverend Castilla remained steadfast in his opinion: he disregarded the warnings of his Ordinary; so that scandals and disputes grew daily. Then the Archbishop took action...

[*Latin ed. p. 14*]

14. IN SPAIN. He entrusted the matter to the General Vicar, instructing him to proceed judicially. Having initiated the process and received certain proofs, the Vicar deemed it appropriate to suspend the parish priest from office. At that time, the Reverend Castilla submitted a letter to the Archbishop, promising to obey the mandates and to do nothing contrary to diocesan discipline. Therefore, initially, there was no further progress. But he soon forgot his promise; he again intended to obstruct the functions of the vicars, to disregard the authority of the ecclesiastical ministers appointed by the Ordinary, and to perform other actions that demonstrated his manifest contumacy and rebellion. Consequently, the matter was brought before the tribunal again. The parish priest, summoned by the General Vicar, asserted that he could not appear, alleging that he was suffering from poor health. Therefore, an archpriest was delegated to obtain a declaration from the Reverend Castilla, which he refused to provide to the best of his ability. After hearing the evidence, the General Vicar suspended the parish priest from office and benefice as a precautionary measure, ordering that, in the meantime, the parochial revenues remain deposited, until the matter was concluded. Castilla appealed the suspension to the Tribunal of the Rota. The Vicar, however, only admitted the appeal for its suspensive effect, because the precautionary suspension did not entail any irreparable prejudice, and it had been stipulated that all parochial revenues should be retained in deposit, in order to safeguard them. Nevertheless, the Tribunal of the Rota, in a judgment dated July 14, 1893, admitted the appeal in both its suspensive and devolutive effects, and ordered the General Vicar to transmit the proceedings. This was executed by the Vicar without delay; but a judgment on the principal cause had not yet been rendered. In the meantime, the Reverend Castilla, without the permission of the Ordinary, went to Madrid, and obtained a decree from the civil authority, in which it was declared that he was the only parish priest in all the churches of Spain, and therefore in that of St. Michael in Xeres, and that all other coadjutors

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were dependent on him. Upon his return, relying on this declaration, he insisted on being recognized as the sole parish priest, and he ordered the sacristan, who served as vicar, coadjutor, and in the absence of the parish priest, to...

[*Latin ed. p. 15*]

HISPALEN. On the fifteenth of the month, he forbade the performance of the sacred functions, alleging in writing that this had hindered his own jurisdiction, and therefore that he had incurred a sentence of excommunication *latae sententiae*, a censure reserved specifically to the Roman Pontiff. Having been warned by order of the Eminent Ordinary, by the Archpriest, not to prevent the priest who was the sacristan from celebrating Mass, he replied: "His action is sufficient for censure, and no prior declaration is necessary; therefore, as long as I am not certain beyond doubt of his absolution, I cannot permit him to celebrate Mass, lest he become a cooperator in the same offense." Under these circumstances, the Eminent Archbishop, for reasons of health, left his residence for a time and left the Dean of the Chapter in his place. This Dean, seeing that R. Castilla did not cease from disturbing the vicars and the curate, again ordered the Archpriest: "Warn R. Castilla to cease from his disturbances." But he vehemently resisted, repeating that the vicars were nothing more than his assistants for parochial functions, and that they had been appointed by a higher authority. The Archpriest wrote that he was compelled to demand that R. Castilla manifest, in writing signed by his own hand and with a guarantee, that he did not acknowledge the Eminent Cardinal Archbishop, and that he recognized the parochial and sole jurisdiction of the Church of St. Michael, according to a faithful and authentic interpretation with full authority (perhaps with civil authority). And he gave other similar answers, in which he asserted that the Archbishop could do nothing in this matter, because he could not change the common law. His words were in accordance with his actions. He prevented the vicars from exercising any jurisdiction; scandals increased, especially when certain publications began to be written against the Archbishop and his authority, among which the most offensive was a new newspaper entitled "Il Economo," in which indecent writings appeared against ecclesiastical discipline and the decrees of the Dean, and it came to the point where they asserted that he had incurred a greater excommunication. It was commonly believed that the author of these writings was Castilla, and that at least this publication was written under his inspiration. Meanwhile, from letters sent by the Dean...

[*Latin ed. p. 16*]

16. In Hispalis, the Reverend Castilla was daily increasing in boldness in her speech and actions, causing anxiety to Catholics, and it was their desire that an end be put to such a scandal. Then, having gathered all these things

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together, and having received information from the Archpriest, on August 25, 1893, the Dean suspended the parish priest Castilla, informed by his conscience, and declared him subject to excommunication, reserved in a special manner to the Roman Pontiff, according to the disposition in n. VI of the Apostolic Constitution. Again, the Reverend Castilla appealed to the Tribunal in Matritum, and this appeal was denied, first because the matter concerned a declaratory sentence of censure, and second because the affair had been handled extrajudicially. The tribunal, acting as a court of appeal, added that the Ordinary of Hispalis had received a mandate to transmit all the proceedings. The Ordinary refused, saying that he would submit all matters to the judgment of the Holy See. Nevertheless, the Tribunal, having heard only Castilla, who had again presented herself in Matritum, rendered a judgment in her favor; accepting the appeal, it declared that the parish priest had not incurred any censure whatsoever, and it reserved to him all the rights that might belong to him to seek compensation from all damages and losses that he might have suffered as a result of the Dean's sentence; it also condemned the Dean to pay all the expenses of the trial, and warned him: that in the future he should abstain from imposing any kind of censure for reasons whose examination and resolution had been entrusted to this Supreme Tribunal. With matters thus brought to this state, the Most Reverend Archbishop, who had reported everything to the Holy Congregation, was written to on April 28 of the following year, to grant the parish priest Castilla a reasonable time to present his rights before the Holy Congregation. In the meantime, and until the definitive judgment of the Holy See, he was not to dare to interfere in the administration of the other two parishes, according to the ancient arrangement in that same Church, nor in any way to disturb their rectors, otherwise he would remain suspended from his office by order of the Holy See. When further communications from the Holy Congregation arrived in Hispalis, the Reverend Castilla was still residing in Matritum; therefore, the Most Reverend Archbishop...

[*Latin ed. p. 17*]

SEVILLE. The bishop sent these documents to the Bishop of Madrid, so that Reverend Castilla might be informed. He refused to go to the Episcopal Curia; and when an official of the Curia came to him to deliver the aforementioned letters, Reverend Castilla refused to receive them, saying that he wished to receive nothing, nor hear anything, nor to acknowledge having been notified of anything. Upon learning of this, the letters were again sent to the Most Reverend Archbishop, so that, by decree, in the best way possible, yet in a legitimate manner, Reverend Castilla might be ordered to appear before the ecclesiastical court within three days to acknowledge the letters of the Holy Congregation, under the penalty of suspension, which would be incurred by this very act if he did not comply. Then, Reverend

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Castilla, having learned of the decree, went to the Curia of Madrid, but he denied in writing the authenticity of the letters of the Holy Congregation, and at the same time, while professing the greatest reverence for the Holy Congregation, he attempted to maintain his rights and defend his manner of acting. And when the Apostolic Nuncio, through an intermediary, endeavored to have the same letters notified to him again, providing testimony of their authenticity, Reverend Castilla gave the same response. While these things were taking place, the Tribunal of Madrid ordered the General Vicar of Seville to: 1° Demand from the Dean of the Chapter the expenses of the proceedings, from the parish priest who was the plaintiff, having been instructed in this matter, and to declare that the decree of the aforementioned Dean regarding the excommunication imposed on Reverend Castilla had no validity; 2° To order the rectors of the church of Saint Michael in Xeres, who, in addition to their own duties, had fulfilled what Castilla should have paid from the month of September of the following year, to deliver to Reverend Castilla the parochial revenues, not only for the time before the sentence of the Tribunal, which declared him free from censure, but also for the time during which he was declared free and was able and should have returned to the parish, but did not return. Because of these things, the consciences of the faithful were greatly disturbed, and some sent a petition to the Most Holy Father, recently, asking that He might intervene to reprimand the audacity of Castilla. And although no acts were taken to disturb the jurisdiction of the economists,

[*Latin ed. p. 18*]

18. The Bishop of Híspales, wishing to enforce the agreement, issued a decree in which he declared that the aforementioned Castilla had, by that very fact, incurred a suspension from the divine sacraments, imposed by the Holy Congregation, and on December 21st, he communicated this to the parish of Xeres, ordering that he abstain from the exercise of his ministry, lest he fall into irregularity. The Reverend Castilla did not immediately wish to respond, but the following day he went to the Archpriest and, in the presence of witnesses, declared that he considered himself to be acting in accordance with the law, and therefore did not consider the Bishop's decree to be valid.

1. Because the resolution of the Holy Congregation lacked all validity, inasmuch as it did not possess the marks of authenticity required by canon law.

2. Because, even if that resolution were considered to be authentic, it was communicated in a completely illegal manner, since a deadline had been set for him to present his rights before the Holy Congregation, without any notification being given to him regarding the matters to be addressed.

3. Because, even if it were authentic, it was utterly devoid of force, since it was entirely contrary to pontifical constitutions and the concordat law in

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force in Spain.

4. Because, by a sentence of the Rota of February 15, 1894, the Bishop was formally prohibited from imposing censures on him regarding matters brought before the aforementioned Rota.

5. Because he himself was preventing his coadjutors from exercising their jurisdiction, and he had disturbed neither the jurisdiction of others, nor had he done so through words or deeds.

He concluded by stating that he considered the suspension to be null and void, but that he would nevertheless behave as if he were truly suspended, reserving for himself the faculties granted to parish priests by Benedict XIV in his Constitution, namely: "Full license" relating to the celebration of marriages. Furthermore, he issued a solemn protest, stating that he considered the decree of the Most Reverend Archbishop to be null and void, and that he would appeal against it to the Rota, and that anyone who might be appointed by the Archbishop in his place should know that he would never recognize him, and would demand compensation for all damages and losses that he might suffer.

Finally, it will be unnecessary to point out that, after this...

[*Latin ed. p. 19*]

HISPALEN. On the nineteenth, he administered the Eucharist to the faithful; he celebrated Mass, sat in the confessional, and delegated other priests to administer baptism and to bring the viaticum to the sick. All of these things appear to have been done on the twenty-second of December, recently passed.

A SYNOPTIC DISCUSSION: DEFENSE OF THE PAROCHIAL PRIEST. It can be observed that the position of several parochial priests in one and the same church is not entirely in conformity with canonical law, as all canonists assert, who with one voice proclaim that in one church, there must be only one parochial priest, because he is the bridegroom of the Church – Decree 178, n. 4, p. 11. De Luca teaches that the plurality of parochial priests is prohibited by law (Dis. 9, n. 5, Annot. ad SS. Con. Trid.), "lest one woman have two or more husbands." It also seems to suggest the law of competition prescribed by the Most Holy Council of Trent, for among those competing, only one ordinarily excels above the others; and in practice, it is not only difficult, but almost impossible, to have two or more who are completely equal in knowledge, prudence, merit, and all the other requirements necessary for holding a parish. Therefore, the law of competition clearly indicates that there must be only one rector of the parish. And although it may be admitted that several can be present, if anarchy is to be avoided, one must be present who is at least the first among equals, and who, therefore, will be the parochial priest, or the bridegroom of the Church. It is not helpful to object that equals can take

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turns governing the church in order to avoid confusion; for this can be done in those duties in which the principle of perpetuity is lacking, but not in parochial benefices which are held by right and perpetually. This is what the Doctors commonly teach in chapter 15 – De Praeb, et Dignit – where it is stated that "one church must belong to only one priest." This is confirmed by the Council of Trent, Session 24, canon 13, De Re; therefore, Reifenstuel.

[*Latin ed. p. 20*]

20. HISPANIANS. Book III, title 3, paragraph 30, after citing several others, he concludes: "One church ought to belong to only one priest. Just as one body cannot have two heads, otherwise it would be monstrous." If this position, which holds that more than one pastor in the same church is contrary to the law, is to be maintained, it must apply even more so in Spain, where the law of Trent received solemn confirmation in the Concordat; thus, admitting more than one proper pastor in the same church, besides the law of Trent, would also violate the concordatary law. This inconvenience does not escape the civil authority, which, therefore, relying on the sanction of Trent and the Concordat, has not hesitated to declare that in the church of Saint Michael, there is only one true and proper pastor, while the other priests are simply coadjutors. And it is remarkable that the ecclesiastical authority itself seems to have recognized this distinction, for when it came to appointing other priests in the church of Saint Michael, it called them only "economes," and, without concurrence, entrusted them, in their own right, with the care of souls; but when it was necessary to confer a true and proper parochial benefice, it called for concurrence, proposed three candidates to the government, and solemnly instituted Salvator Castilla, calling him the proper pastor. From this, it can clearly be deduced that even the Archbishop admitted the difference between the pastor and the economes or vicars, a difference which can only consist in the fact that Father Castilla exercises the care of souls by his own right, while the others exercise it by the right of coadjutors. The civil authority has recognized this state of affairs with the best of laws, assigning the smallest pension to the economes and the customary, appropriate pension to the pastor. With these things established, it is clear that Reverend Castilla, by preventing the economes of Saint Michael from exercising parochial functions, did not usurp a foreign jurisdiction, but exercised his own right. Therefore, the crime committed by him, his obstinacy and perversity, should vanish into thin air, and no true reason has been given to impose a suspension; and the suspension...

[*Latin ed. p. 21*]

HISPALENSIS. 21, concerning the precautionary measure, the interlocutory sentence imposed has no value. Therefore, it appears that Castile,

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justly and rightfully, appealed from this suspension, both to suspend and to reverse it, since the foundation upon which such a censure is based is lacking. And the Vicar General only wished to admit the appeal in the case of reversal, because the imposed burden was not irreparable, according to the decrees of the Council of Trent, Session 13, chapter 1, De Ref., for such a provision was enacted to restrain the excessive license to appeal, which often rendered the administration of justice futile. But it did not prohibit, nor could it prohibit, rational appeals, lest the right of appeal be violated, which the Council itself calls *praesidium innocentiae* – and concerning which, the ancient canons absolutely command that it be observed. Furthermore, even setting aside what Suarez teaches in *De censuris* – Disp. 28 – that one can always appeal from a suspension, both for suspension and for reversal, as Cl. D'Annibale confirms – *P. I* n. 382, note 33; because such a suspension is rather a punishment than a true censure. Furthermore, it should be noted that the Sacred Congregation held that a simple threat of imprisonment, torture, excommunication, etc., can be considered an irreparable burden; and therefore, much more so, this should be said of the suspension from office and benefice imposed upon the parish priest, for it endangers his reputation, diminishes his authority, and makes him an object of ridicule and aversion to the Christian people. And how could such a burden be remedied by a final sentence? Even more serious grounds for appeal seem to exist in the sentence of the second suspension, in which R. Castilla was fined for acting according to his informed conscience; and also in the declaratory sentence, in which he is warned that he has incurred excommunication in a special manner reserved to the Supreme Pontiff, according to article V of the Apostolic Constitution *Sedis*. For such a declaration has no value, because there was no citation, as Reiffenst. teaches in *Tit. 39 De Sent. Excom.* n. 23, *Thesauro De Poenis* part. 11, fol. 121, and all canonists agree, except in the case where the crime is notorious.

[*Latin ed. p. 22*]

22. HISPALENSE. Whether the accused is present or absent, judgment should not be rendered in absentia, unless the accused is in contumacy. And even if a declaratory sentence has been issued, it can always be appealed with suspensive effect. The same author, in *Thesaurus*, Part I, chapter 25, states: "However, an appeal is admitted from a declaratory sentence and another penalty, imposed by law, provided that it is not manifestly known that the penalty has been committed... and by such an appeal, the penalty itself is not suspended, but the declaration, so that for the time being, the accused is considered as not having been declared [guilty]." The reason for this could be that the declaration of a sentence presupposes a grave offense, and the judge may be deceived in determining the existence of the crime, and therefore, the effect of the

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declaration is suspended until it is clearly proven that the crime has been committed. The same must be said of a suspension based on *informata conscientia* [informed conscience], which seems entirely unsuitable for declaration. For this extraordinary remedy belongs properly to the Bishops, so that there are not lacking authors who teach that if a Capitular Vicar wishes to use it, he must request permission from the Holy See. Much more so this must be said of a General Vicar, to whom all deny this power, and only a few teach that a General Vicar can proceed based on *informata conscientia*, but only in the case in which this power has been expressly and specially delegated to him by the Bishop. Therefore, no one will dare to assert that the Dean of the Chapter possessed this power; and for this reason, he acted improperly in imposing such a suspension. Furthermore, both the authors and the practice of the Holy See teach that such a suspension is imposed only for hidden offenses; and in this case, it can be asserted without fear of error that the Dean had no other reason than resistance to the mandate of Castile to recognize the jurisdiction of the oeconomes [ecclesiastical officials], which cause is entirely public and known to all, and the Holy See has always revoked suspensions based on *informata conscientia* imposed for public crimes, as can be seen in the documents of S. Severinus, September 19, 1878; S. Agathae Gothorum, February 26, 1853; Bosnia and Sirmium, December 20, 1873, and Lucionen, April 8, 1848.

[*Latin ed. p. 23*]

HISPALEN. 23 It is likewise established by law that, while an appeal is pending before a higher judge, a lower judge cannot impose new penalties for the same crimes, whether true or alleged; otherwise, such actions would be considered null and void, since the lower judge lacks all jurisdiction with regard to matters pertaining to the appealed case. Therefore, in this case, since the parish priest is always accused of the same crime, namely, obstructing the exercise of jurisdiction by the economic administrator and resisting the mandates of his Ordinary, the actions taken by the Dean while the litigation is pending must be considered entirely invalid. DEFENSE OF THE ARCHBISHOP. On the other hand, it must be observed that the Council of Trent, when it spoke of the law concerning parish boundaries, and when it ordered that the people be divided into certain and specific parishes, did not establish that two parish priests could not reside in the same church with distinct territories and distinct counts of souls. "Moreover, in those cities and places where parish churches do not have defined boundaries, and their pastors do not have a specific people to govern, but administer the sacraments indiscriminately, the Holy Synod commands the Bishops, for the safer salvation of the souls entrusted to them, to assign a specific and permanent parish priest to each specific group of people." Thus, Council of Trent, Session 24, chapter 13, concerning Reforms. From

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this, it is clear that the Fathers of Trent were indeed concerned that the faithful have their own certain pastor, but they did not decree that only one parish priest should reside in the same church. Nor could they have decreed this, since they knew that the number of churches was insufficient for this purpose. It does not seem to be true that some affirm that a parish priest is the "bride" of his church; and just as one woman cannot have multiple husbands at the same time, so too, one church cannot have multiple parish priests. The opinion that a parish priest can only be called the "bride" of his church in a broad sense is not more true; this designation properly applies to Bishops, to whom the honor of a ring is granted as a sign of their betrothal to their church. And even if a parish priest were truly...

[*Latin ed. p. 24*]

24. SEVILLE. And it could properly be called the bridegroom of its church, which must certainly be understood in terms of spiritual provision and benefit, and not in terms of the material structure of that same church. From these things it is clear that the Archbishop of De Lianes did nothing contrary to the law when he decreed that in the Church of Saint Michael, several parish priests should reside, independent of each other in terms of parochial jurisdiction, united only by concord in the celebration of parochial functions. And when there is competition for these benefits, when they are perpetual, when they have a distinct population, and when only one parish priest exercises jurisdiction over a specific portion of the faithful, then all the requirements are present that constitute true and proper parochial benefices. And that these are indeed so, is proven by almost centuries of practice: indeed, even secular authority has recognized and approved this fact and the nature of these benefices, when the Council of State declared "that all are true benefices conferred, of which each, by its own institution, represents a single parish, is the head of one portion, and is clearly independent, even if, for practical reasons, they serve in the same church." It is of no use to appeal to the Concordat of the year 1851; for in it, it is by no means prohibited that several priests may not be in the same church, but only an agreement is made regarding the manner of conferring the benefice and regarding the endowment for the parish priests and assistants. In another agreement of the year 1859, it was stipulated that a new demarcation of parishes should be made. And until this is carried out, the old law remains in force, and nothing must be changed. This was rightly accepted by secular authority itself, for when it became aware of the declaration of the Council of State now mentioned, it immediately sent royal decrees to the parish priests, and warned the Bishops to propose a new demarcation of parishes as soon as possible, suppressing those that were not necessary. Therefore, until the new arrangement takes effect, the action taken by the Archbishop of De Lianes remains valid and lawful. It

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is not to be blamed on the Ordinaries of Seville if, as yet, they have not...

[*Latin ed. p. 25*]

SPAIN. Twenty-five of the matters established in the Concordat have not been put into effect, since they have already fulfilled their purpose; and for the city of Xeres, three churches have been designated to which the pastors of St. Michael are to transfer their residence, each assigned more or less ten thousand faithful; but the approval of civil authority is still lacking. Nor can the denial of stipends to the economists or vicars benefit D. Salvator Castilla, because this action was taken without the consent of the Ordinary, and when the society in Spain was disturbed by political turmoil. Moreover, if the Government subsequently refused to reimburse the economists except with the lowest stipend of coadjutors, this cannot alter the nature of the benefices, especially since the Ordinary has always considered them to be true pastors, granting them all parochial rights and endowments; and no one can claim that secular authority, whatever it may be, can alter spiritual jurisdiction. The matter is clear, but it becomes even clearer if the conditions stipulated in the edict of competition are considered, which obligate those who submit to the competition. In that edict, it is decreed that for parishes in which two or more pastors reside in the same church, the competition is not held for those positions held by economists, and all rights are reserved to them – which, according to the edict, are not subject to the competition; without prejudice to the fact that the current economists of these parishes, and those whom we will name subsequently, will continue in that capacity, according to our will, with all the rights and endowments that they have enjoyed up to the present. Indeed, when the edict was published, there were two economists in the church of St. Michael: why, then, does Castilla not recognize what was so explicitly reserved for them? But even if these things were not the case, all doubt would be dispelled by the letter of institution given to Rev. Castilla. In it, the following words are stated: "Since you have been presented to us, after a customary preliminary competition, and by the Catholic Majesty have been nominated and chosen to obtain the curacy of our parish church of St. Michael in the city commonly called Jerez de la..."

[*Latin ed. p. 26*]

26. HISPALEN. Since the office of [benefice] is vacant due to the death of the Reverend Joachim Yuste, its last holder, we confer upon you the aforementioned benefice and solemnly institute you in it. – From these matters, it is clearly evident that the Reverend Castilla is the successor of the late Reverend Joachim Yuste; and since he was one of the parish priests of Saint Michael, he ought also to be the Reverend Castilla; and therefore, when he boasts that he is the only parish priest, and that the others are nothing more than his assistants, he seems to be dreaming, and holding as certain what

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is only in his desires. With these matters openly stated, it seems impossible to doubt that the officials of the Church of Saint Michael all possess true and proper jurisdiction, distinct and independent from one another; and therefore, there is no doubt that the Reverend Castilla, by hindering the officials from performing their parochial duties, by forbidding them from celebrating marriages, and by striving to have everything depend upon himself, as the only parish priest, directly impedes the jurisdiction of others; and although he has not invoked the aid of secular authority with a strong arm, because perhaps it would have been superfluous, nevertheless he has used it so that the matter might be resolved in his favor, although the issue was one of simple spiritual jurisdiction. Therefore, the manner in which the Vicar General acted seems far from commendable. For since the Ordinary had not been able to persuade the Reverend Castilla, after frequent and repeated warnings, to respect the rights of others, there was nothing left to do but to resort to the rod and punish the contumacious. The Vicar General used a suspension as a precaution, which is usually imposed only by the office itself (D'Annibale - Summ. The. Mor. p. I, Tract. VI, no. 384); and furthermore, he ordered that the parochial funds be deposited in [Gafsa], so that, once the dispute was ended, they might be distributed to those to whom they were due. It seems that he could not have proceeded more mildly. There was a certain rebellion against ecclesiastical authority on the part of the Reverend Castilla; and there was the most certain jurisdiction of the other parish priests. Therefore, if a fault was committed, it must be said that it was in indulging the assertions and boasts of the Reverend Castilla, when, even after some doubt had been raised about the jurisdiction of the officials, it was confirmed by so many and such arguments.

[*Latin ed. p. 27*]

SEVILLE. It seems that the same may be said regarding a subsequent suspension imposed with informed conscience, and regarding a declaration of excommunication incurred by the same person. Reverend Castilla was absent from his residence for a long time without the permission of the Ordinary; upon returning to the parish, he did not change his behavior in the least; he again harassed the vicars, scorned their rights, and raged against ministers appointed by the Archbishop; and his audacity grew so great that he declared the Dean of the Chapter, acting in place of the Ordinary, to be excommunicated. Nor was this enough. The *Ephemerides* began to write about the things that were happening among the priests; they sought to undermine the Ordinary, to criticize the affairs of the Curia, to support the rebellious, to spread falsehoods, to stir up and foster scandals; this was their work. Meanwhile, the Curia of Seville was aware that Reverend Castilla was the secret author, or at least the promoter, of all these things. He, when warned to desist, refused, and indeed seemed to become even more aggressive in attacking ecclesiastical authority. In these

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circumstances, the Dean, who at that time was the Ecclesiastical Governor, with a full assembly, as the *Hispanus* says, having obtained further information, proceeding *extra iudicialiter*, imposed a suspension with informed conscience on Reverend Castilla for the reasons that he knew secretly; and for the violation of another jurisdiction, which was known to all, he declared him to be excommunicated, a matter reserved in a special manner to the Supreme Pontiff, according to paragraph VI of the Apostolic Constitution *Sedis*. And it is surprising how Reverend Castilla, who had repeatedly said that others had fallen into this censure, was extremely offended. Whatever may be said about the manner in which the Reverend Dean acted in this matter, it is certain that one can only appeal from a suspension imposed with informed conscience to the Supreme Pontiff, as this Holy Congregation has defined many times; therefore, an appeal to the Rota does not seem to be possible. *Barbosa, Sess. 11, c. 1, De reform.; Gallemart, ibid.; Benedict XIV, De Syn. Dioeces, lib. 12, 4 et 5; where he cites several resolutions of the Holy Congregation, such as Verulana, April 3, 1625; Bononiensis, November 14, 1654.*

[*Latin ed. p. 28*]

28. SEVILLE. It cannot be admitted that a distinction exists, namely, that this is true when the very suspension is being discussed, but not when it is inquired whether the crime for which the suspension was imposed is of such a nature that the prescribed censure can be imposed. Furthermore, if this distinction is admitted, recourse to the Supreme Pontiff would be rendered ineffectual; for if any tribunal is granted the power to inquire into the causes of the suspension and to declare it null, it is clear that the Supreme Pontiff is not the only one who can demand an accounting from the Bishops regarding this suspension, and who alone can judge concerning it. Therefore, since there can be no doubt about the nullity of the recourse interposed by the Reverend Castilla, there can likewise be no doubt about the nullity of the effects of that same recourse. After these matters have been discussed, the following questions were proposed: I. Whether the discipline in force in the Church of Saint Michael in Xeres, and in other places within the Archdiocese of Seville, by which several parish priests reside in the same church with a distinct census of souls, can be maintained; II. Whether the suspension imposed on the parish priest Castilla, for caution and for informed conscience, as well as the declaration of censure imposed by the same, can be maintained.

RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on January 26, 1895, decided to respond: To I. Affirmative: therefore, the parish priest Castilla has usurped the jurisdiction of the Economus, and consequently, he is bound to restore all emoluments received and to make amends for the damages caused to them; the suspension shall remain in effect pending the proceedings of the letters of the Sacred Con-

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gregation of April 28, 1894, and the decree of the Archbishop of December 20, 1894. Having considered and pondered all things, the Archbishop hereby grants the priest Castilla a term of one month, in which he must humbly submit and obey the mandates of the same Archbishop; if this time elapses without effect, and if his disobedience is established, the same shall be removed from the parish by the name and authority of the Holy See, and furthermore. To II. Deferred.

[*Latin ed. p. 29*]

29 ANDRIA. On the 26th of January, 1895. Tridentine Council, Session 24, Chapter 12, Concerning Reforms. COMPENDIUM OF THE AGREEMENT. In the Cathedral Church of Andria, from a very remote age, there was provided for the clergy attached to it, a certain endowment, consisting of two funds, one called the "choral fund" and the other called the "mass fund," as also mentioned by Pope Benedict XIV in his Constitution "In excelsis." Fifty-two canons participated in the choral fund; and formerly, all the priests could benefit from the mass fund after a certain period of service to this church; later, the number of priests who could participate in this mass fund was reduced to fourteen, who were honorifically designated as "Mansionaries"; it does not appear that true and proper Mansionary benefices were then established. This custom of the Church of Andria was approved by Pope Pius VII through the Brief "Impensa." It is worth noting that the mass fund was common to the canons and the mansionaries, so that it was not only divided equally among all, but if one of them, whether canon or mansionary, was absent, the portion that was vacant, as if by a firm right, was given to the remaining members in proportion. Things were thus until the year 1860, when the sacred patrimony of the Church was unjustly seized. The revenues were reduced, and others were not sufficient to replace the missing mansionaries. However, in the year 1886, a controversy was proposed to the Sacred Congregation "Andria. Concerning Absolution, Reduction of Burdens, and the Establishment of a Mansionary College," in which, with regard to our matter, there was consideration given to the establishment and endowment of ten mansionary benefices, the endowment of which would be obtained from 4250 florins drawn from the total sum of 30,218 florins, which still remains with the Chapter, after deducting the burdens, from the so-called "old mass fund" provided by the Government. Thus, 4250 florins were distributed among the ten mansionaries.

[*Latin ed. p. 30*]

Thus, in order that suitable provision might be made, a reduction of the burdens of the Mass was requested. Concerning these matters, the following questions were raised: "I. Whether and in what manner there is place for absolution concerning the omission of daily distributions in this case.

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- II. Whether and under what conditions there is place for the erection of a college of ten canons in this case." On July 24, 1886, the Sacred Congregation of Bishops of the Holy Roman Church, composed of Cardinals interpreters of the Council of Trent, responded. - To I: Affirmative. - To II: Affirmative, according to the opinion expressed by the Bishop in letters of June 4, 1885; however, so that the number of Masses may be increased to three hundred annually, and for this occasion alone, those deemed more worthy from among the current honorary canons should be appointed, reserving the right for the aforementioned canons to obtain the first vacant canonries without competition, but forbidding both honorary and effective canons from using the insignia, unless they have first requested them from the Apostolic See; and it is the intention that the Bishop should most diligently take care that, through the new constitution of the college, pious revenues are not subjected to the usurpation of the Government; this was agreed upon with the Most Holy Father concerning both matters. And having made a report on the aforementioned matters to Our Most Holy Lord through the undersigned secretary on August 2 of the aforementioned year, His Holiness deigned to approve and confirm the resolution of the Sacred Congregation, supplementing it from the treasury of the Church."

With the college of canons thus arranged, the occasion for the present controversy began to arise. For, day by day, the number of Masses increased, both from new benefices and from the money which purchasers of properties usurped by the Government are compelled to pay for the purpose of settlement. Then the canons considered that, just as the canons, they too, should enjoy a proportionate share of these new revenues, and they made their intention known to the Chapter. The canons initially resisted, affirming that a certain portion had already been assigned to the canons in the foundation of the college, and therefore they could demand nothing further. Then the Chapter, having been brought into harmony with the Sacred Congregation and the Ordinary, (You have this question in Vol. XIX, page 532).

[*Latin ed. p. 31*]

ANDRIEN. On the 31st of August, in the Chapter meeting on July 19, 1892, the following was decided: to grant the Mansionaries participation in the offerings for new Masses, unless the will of the testators forbade it; to grant participation in the restitutions made by the purchasers of properties belonging to the Mass of our Church; and to leave it to the judgment of the ecclesiastical authority to provide a norm by which the Mansionaries could enjoy this concession and participation. The Mansionaries considered that they could not accept the agreement proposed by the Chapter; for although, by this agreement, they would obtain the desired participation in the Masses, they could not receive it as a donation, since it would belong to them by right, and neither they, nor anyone else, would be permitted

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to deny this, either now or in the future. Therefore, through their elected canon lawyer, the Mansionaries proposed a different scheme of agreement, in which the transaction proposed by the Chapter was accepted, but not as a gratuitous act, but as a burdensome one. The Canons not agreeing to this type of agreement, the Ordinary himself, after having unsuccessfully attempted to find a way to settle the dispute peacefully, issued certain letters to the Sacred Congregation of the Council, proposing a reform of the Decree in order to prevent the dispute. However, the parties, having unsuccessfully tried to reach an agreement, intend to exercise their judicial rights before the Sacred Congregation of the Council. The Mansionaries first contend that the Decree of the Sacred Congregation of the Council from the year 1886 should be declared null and void, since it is infected with a flaw of deception, and therefore they request the opening of the case. Secondly, they demand that the same Decree be reformed according to the requests of the Mansionaries. Thirdly, if both are denied, they ask whether they are entitled to the right to participate in the augmentation of the Mass. The Synoptic Discussion: The Patron, regarding the question of whether to admit the request for the opening of the case in this instance, replies that the flaw of deception or trickery is not only difficult to prove, but also, unless with the fullest arguments, the DEFENSE OF THE CANONS.

[*Latin ed. p. 32*]

32 ANDRIA. It is possible to admit [an appeal]. Thus, the Sacred Roman Rota, in the case of Centumcellarum, concerning the opening of proceedings, before Marino, on April 18, 1842, § 4: "A pontifical rescript cannot be overturned in any other way than if it is most clearly demonstrated that grace was obtained through deceit or fraud, especially if the matter concerns a grace granted after information and a vote have been given." Indeed, it follows that the vice of deceit and fraud is difficult to prove and to admit, as is stated in the aforementioned case. "Grace is not vitiated by a false concession of those things which probably did not move the granting authority." And further, "In the case of grace, after information and a vote, deceit and fraud are not admitted, even if the facts are presented less correctly in the petition. Just as it is not admitted whenever it concerns minor matters, so that the incorrect presentation of facts would never have changed the will of the granting authority," and this is consistent with the decree of Forolivien, in the apostolic letter of January 24, 1848, before Bonini, and the decree of Dismemb. of January 19, 1844, before Alberghini, § 5. Also, the decrees of Comaclen, concerning the opening of proceedings, of March 24, 1847, before de Avella, § 2, where it is stated again, as in the preceding statements, "It is never customary to grant an opening of proceedings against a prince's rescript, unless it is clearly established that the prince himself was induced to issue the rescript through true reticence, or through a false narration." Furthermore, in Rome, or rather Veliterno,

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concerning the opening of proceedings, of June 24, 1848, before Quaglia, § 3: "Not every reticence gives rise to deceit, but only that which, known to the prince, would have completely prevented him from granting the grace, or at least made it more difficult for him to grant it." With these principles established, it is concluded that, in this case, there is no basis for admitting an opening of proceedings. Indeed, the petition from Andria did not seek anything for itself directly, nor a special indulgence that would pertain only to its own honor and dignity; it simply requested the concession and erection of a college that would be a source of honor for the cathedral church, and also an aid and support for the priests of Andria, who have been reduced to poverty due to difficult times. Moreover, since this action is undertaken out of piety and spontaneous generosity, it is certainly not the result of true reticence or a false narration.

[*Latin ed. p. 33*]

ANDRIA. It does not seem possible to include 55 [persons]; since the Chapter was not necessarily or usefully involved in obtaining the establishment of the College. Indeed, a very extensive exposition of facts was presented to this Holy Order on July 24, 1886. In it, the beautiful history of the Church of Andria was recounted; the effects of the Brief issued by the Supreme Pontiff Pius VII were described. Furthermore, an explanation was given of the twofold Mass, namely, the choral or canonical Mass, of which only the Canons could participate, and of the other, which was called the Mass of the Masses, filled with the legacies of Masses left by pious founders to the Chapter. Also explained was the number of canons in the Sacred Chapter, the revenue of the Masses of Masses diminished by the conversion, and it was stated that only thirty-three canons, and not the honorary Mansionaries, participated in the Masses. Therefore, the Chapter, together with the Bishop, strongly desiring to bring about some remedy to this state of affairs, requested a healing and remission with regard to the past, together with a reduction of the Masses of Masses, in order to truly establish a College of ten Mansionaries, in place of the former fourteen Mansionaries.

Then, as is customary, the exposition and the narration of facts were followed by a full report of the Bishop's information and opinion, presented in writing. Furthermore, it is received in law that the Ordinary is considered to be perfectly informed about the state and privileges of his Church, according to the decision of the Rota in Tisianen, Praeeminentiarum, January 16, 1714, decision 37, paragraph 6, page 13, recent.

Moreover, the Orator continues, stating that in this case, the judgment of openness of mouth does not apply, and that the consent of the Mansionaries was completely given before the very concession; and also the subsequent executive decree, which has been observed from the beginning of the concession until the present. Indeed, it was known to the Bishop

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and the Chapter to the presbyters of the cathedral church, who were called Mansionaries only by name; they were aware of the revenue assigned to them, of the obligations, and of the services; nevertheless, according to Acta, Volume XXVIII, page CC C XXV.

[*Latin ed. p. 34*]

34. ANDRIEN, in the documents presented by the Mansionaries, by order of this Holy Congregation, without ambiguity, declared "their full conformity to the aforementioned proposal." The advocate, addressing the second point of the question, affirms that there is no reason to reform the Decree of the year 1886, given the circumstances and conditions. Indeed, from the erection of the College until the present time, there have been no changes or disturbances; rather, the same conditions and circumstances remain, exactly as they were from the beginning, without any alteration. Furthermore, according to the advocate, there is no reason to rescind the Decree, and this is further supported by the prior consent given by the Mansionaries before the decision was made, and by their acceptance and observance of that same decision. It is well known to this most esteemed Senate that the Mansionaries themselves were instructed by the Ordinary and Chapter to be "invested with the benefice," to which they had previously not been entitled, with the express conditions of the Holy Congregation. However, the rule of law is that no injustice is done to one who willingly consents; therefore, if the Mansionaries willingly consented to the benefice with the expressed conditions, no injustice is done to them if the decision is confirmed. Furthermore, the advocate observes that there is no reason for reform, as demonstrated not only by the execution of the Decree for a long time, without any objection from the Mansionaries, but also by the legitimate conditions established therein. For, the executing Bishop states, "with the Apostolic faculties, by which, through the aforementioned decision and confirmation (of the Supreme Pontiff), we are able to erect a college in our aforementioned cathedral church, and we establish ten Mansionaries, dedicated to the service of the same Church and choir." This erection and foundation is established 1. under the law that each of the ten Mansionaries is obligated to perform service in the choir, to celebrate the Sacraments as prescribed by the canons of the same cathedral, so that, all the Mansionaries, in turn, are bound to celebrate the conventual Masses, which are often celebrated with singing, as well as to perform the duties of a minister at solemn Masses, and to...

[*Latin ed. p. 35*]

ANDRIEN. 35. Furthermore, as is customary, readings are to be read in each cathedral church. The chapter assigns to the college, from its revenues, a "mass stipend," so called, which revenues must remain with the same chapter and be administered by it, amounting to one thousand

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annual ducats, or 4250 pairs, and thirty mass offerings, which constitute twenty pairs of ducats, or 85 livres. Thus, the stipend of each canon consists of 425 livres. The canons have the power to participate in funeral services, sacred processions, and other similar events, and to receive emoluments, if any, amounting to half of what is received by the canons themselves. Indeed, such conditions are entirely in accordance with the nature and essence of the college, according to its purpose for which it was established, and also with our regulations which require that in cathedral and collegiate churches, lower benefices be established which are not part of the chapter. Barbosa writes: "Besides the dignities and canonries, or stipends, in a cathedral or collegiate church, other lower benefices are found, which are not part of the chapter, as Gonzalez states in *Reg. S. Cariceli*. Among these are the *assisii*, that is, those who are obligated to be present continuously, and as it were permanently, in the same church, and to perform the office of singing in the choir and celebrating the divine mysteries, of whom mention is made in [the text]. And in the aforementioned Glossary, it is said of the *assisii* as if they are constant, perhaps because of the constancy with which they are obligated to devote themselves to divine worship, which is greater than that of the canons themselves, from which it follows that, to make up for the deficiencies of the canons, and to share in the ecclesiastical revenues, they seem to be appointed." *De canonicis et dign.*, chapter 4, paragraphs 36 and 37. Moreover, the advocate notes that the founders of the college had the right to establish conditions suitable for achieving the intended purpose, both for the benefit of the cathedral church and of the clergy of Andria. Therefore, without their consent, these conditions cannot be altered or changed in any way. If it were otherwise, it would have to be admitted that the right of the founders to impose conditions, as they wish, is futile, provided they are honorable. Therefore, the law of the foundation must be followed, according to the decision issued by this most illustrious Senate.

[*Latin ed. p. 36*]

36 ANDRIA. The petitioner does not fail to note that all the canons were convened to discuss the proposed establishment, stating, "Grace seems to be granted in this case, because all are convened to request it," according to the Reverend Father Secretary of the Sacred Congregation for the Oriental Church, and the canons themselves attest, in a petition dated May 1892, that before the new establishment was undertaken, the honorary canons were consulted regarding the matter. It is clearly understood that these canons readily accepted the offered opportunity. Therefore, there is no doubt whatsoever about the widespread consent given by the canons, nor about the knowledge that the canons possessed regarding the matters at hand. Finally, the petitioner argues that there is no reason to reform the decision of July 24, 1886. Indeed, the entire basis of the opposing petition,

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as the canons themselves state, rests on the claim that their college has been replaced by ancient canons. Hence, they claim an increase in the endowment, an increase in the number of Masses, and the right to fill vacancies. However, the petitioner contends that this claim is based on a false premise, because the present college is the most recent establishment and institution requested and obtained by the Chapter for the benefit and honor of the cathedral church and for the utility of the clergy of Andria, and it is far removed from any notion of being a replacement for ancient canons. This is clearly evident from the preceding documents and from the decision itself. Indeed, if the grace of reducing the number of Masses was granted in order to effect the establishment of a true college of canons, and so forth, then this new college of beneficed canons is commonly referred to as such in the official records. Therefore, in the decision of July 24, 1886, not a single word is found that indicates that the present college was a replacement for ancient canons. On the contrary, it expressly refers to the new constitution of the college. Furthermore, the petitioner argues that the difference in the burdens imposed on this new college confirms this. Moreover, the present canons are obligated to serve in the choir, to celebrate Masses, to participate in all chapter meetings in turn, to recite the lessons, just as true canons or hebdomadaries are obligated, and, more importantly, from the day of their possession, they receive a prebendal.

[*Latin ed. p. 37*]

ANDRIEN. 37, that it be fitting, which could not possibly be the case in the ancient, improperly called, "mansions." Furthermore, the defender argues that the mansionaries form only a separate and distinct college from the Chapter; and therefore, they have no voice in the Chapter. Barbosa has something relevant to say on this matter. "I also believe that the question of whether beneficiaries, if they are in cathedral and collegiate churches, should participate should be resolved according to the doctrine of the gloss on the words 'assis,' in chapter penultimate, concerning non-resident clerics, where it is said that the beneficiary should only serve the Church, and not be called to common deliberations with the canons, because the Chapter has a foundation in common law, depriving the beneficiary. For, when beneficiaries are in the Church, as individuals, the right to assemble is prohibited." From Canons and Dignities, chapter 37, number 17. The advocate confirms that the right claimed by the mansionaries, namely, to participate in the Masses, does not belong to them, because the mansionaries constitute a distinct and separate college from the canonical Chapter, as has already been demonstrated by the authority of Barbosa. This is also evident from the Chapter acts, from which it is clear that the mansionaries were summoned only once with the canons in a single case, which "concerned a bilateral agreement to be made regarding the funerals to be held in the event of the death of the mansionaries and the canons." Furthermore,

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the defender insists that the mansionaries cannot be granted any right to participate by law. For, those who request a contribution, offer a sum of money to the Chapter, because the Chapter, as the legitimate and sole representative body of the ecclesiastical goods of the cathedral, gives its consent. Therefore, the offering can be considered as a corresponding consent given. Moreover, just as the right to administer all the goods belonging to the Church belongs to the Chapter, so too the exclusive right to allocate the fruits and revenues according to the foundations for the celebration of Masses belongs to it. This is confirmed by the principle of property, because it is certain and undeniable that the goods acquired from purchasers belong to the Chapter.

[*Latin ed. p. 38*]

38 ANDRIA. And furthermore, solely with regard to the matter of property, and with this understanding, the purchasers of the Chapter's goods offer a sum. Consequently, it necessarily follows that the sum offered and delivered pertains to the Chapter, because just as the goods are the Chapter's own, so too are the fruits derived from them by any means. Therefore, the advocate concludes, it is futile for the opponents to appeal to equity, when a matter of law is being debated. DEFENSE OF THE CANONICAL CHAPTER. On the other hand, the advocate for the Canons, in the first part of his argument, addressing "the matter of the opening of the proceedings," observes that the opening of the proceedings is granted by the Roman Pontiff primarily when there is a reasonable doubt whether some flaw of deception or trickery would invalidate the Apostolic decree. He then points out that the Canons of the Cathedral Church of Andria, in the year 1885, earnestly requested the Sacred Congregation of the Council (S. C. C.) to add ten Canons to the Chapter, and that it was certainly not the intention to establish a new college, but only to supplement the existing one, which consisted of fourteen priests, with the same Mass and canonical duties, the Canons benefiting from the same privileges. However, the advocate argues, the common decision of the Chapter and the Canons was approved by the Sacred Congregation, and this was carried out by the Bishop of Andria. For the Sacred Congregation responded: "Affirmatively, according to the letter of June 4, 1885," which letter is nothing other than a simple petition. Furthermore, the Bishop solemnly confirmed his intention in a decree, by which, with the delegated authority of the Supreme Pontiff, he established a new college: "In our cathedral church, we establish a college of ten Canons dedicated to the service of the same church and effectively attached to the choir, which new college of Canons shall take the place of those who were admitted according to the statutes as simple participants in the Mass." And finally, on March 31, 1892, when requested by the S. C. C. to express his opinion on this controversy, he was of the opinion that

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the new Canons should receive compensation, at least from...

[*Latin ed. p. 39*]

ANDRIEN. 39, considering the principle of equity and the nature of succession, it ought to have been added in such a way as to equalize it with what was established in the past. Therefore, the advocate, assuming that the new body of mansionaries was to succeed the old one, notes in the document that this condition of the transaction was not explicitly stated. He particularly points out that it was not sufficiently expressed that the fourteen mansionaries did not merely divide the mass offerings equally with the fifty-two canons, but also enjoyed the right of accretion if any of the canonries became vacant, in exactly the same way as they enjoyed it if any of the mansionaries became vacant. This mutual sharing of rights, the advocate continues, would lack any legitimate foundation unless it were understood that the mass offerings were common to all clerics, whether canons or mansionaries, so that each would include the entirety of their right within it, and would simply form a collective. – Celsus, *In L SO D.*, Book XXXII, Title III. For if a certain portion of the patrimony had been assigned to a particular body, which only the clerics belonging to that body could claim, then, indeed, the mansionaries would justly enjoy the right of accretion when one of their colleagues passed away, but they would unjustly encroach upon the portion reserved for the canons when a vacancy occurred within that order. This, his own authority affirms, is what Bellonius states: "Among those who are called to different things, unity of the thing or identity is required in order that the right of accretion may be considered." *De iure accrescendi*, Chapter V, question 72, paragraph 2, and Chapter VI, question 47, paragraph 4. The advocate explains this in order to show that the right of accretion, a clear indication of this perfect communion, is so important that the canons should have mentioned it, along with the other rights, when they were briefly revising the rights of the old body in the document. Therefore, the same advocate strongly reproaches the canons for not having divided the remaining portion of the mass offerings equally between the canons and the mansionaries during the time when the goods were being usurped by the government. Furthermore, the advocate argues that the matter was not properly explained in the document, based on these words from the Rescript: "in such a way..."

[*Latin ed. p. 40*]

40 ANDRIA. However, so that, for this occasion, the law regarding concurrence might be relaxed, those more deserving from among the current canons should be appointed, while reserving the right for the aforementioned canons to also obtain vacant canonical positions without concurrence.

Indeed, the patron clearly demonstrates that, according to the document,

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the Most Reverend and Reverend Fathers had a firm opinion that the honorary canons established in the Andrian College after the confiscation of goods were the same individuals who had previously already been ordained. For those words "reserving the right" seem to indicate that all those already instructed with equal rights are eligible for canonical positions. This, the patron states, is false, because the canons, after the confiscation of goods, were in reality only honorarily designated, without any right to receive stipends, and were thus designated by name. The patron insists that this false opinion is the fault of no one other than the canons, who, in their supplication, stated that the canons who were in the Cathedral Church at that time received nothing from the mass offerings; and they passed over in silence the origin of this college. The patron notes that if all these matters had been properly recounted, the Most Reverend and Reverend Fathers would have seen that it was unjust to add the sum of 4250 florins to the stipends of the current canons; and even more so, because if any of the twenty-six canons, of whom the Andrian Chapter now consists, should die, it is not permitted to replace him, thus increasing the duties of the canons, while more frequent conventual masses must be celebrated; and yet, as the income of the canons who receive a portion of the mass offerings increases, the canons receive not even a single obolus of the canonical income. But this injustice, the Sacred Congregation could not fully perceive, which was certainly unaware of the right to increase that the ancient order of canons enjoyed. Indeed, the patron argues, "It is not right to conceal one's deceit" (I. 63 § 7 i), for the sake of a colleague (17, 2). This rule, which the Roman jurists themselves instilled, expressing the very precepts of reason, was gladly embraced by the Roman Pontiffs, who expressed it most wisely: "Let the liar be deprived of what he seeks" (chapter 20 on rescripts). – And at Aversa...

[*Latin ed. p. 41*]

ANDRIEN. The advocate argues that, in cases of this nature, one can appeal to the excuse of ignorance or good faith; for, besides the fact that neither of these can be admitted in cases of this kind, these defenses would not be helpful in this case, because the error lies not in the impulsive cause, but in the motivating cause; therefore, the rescript is not valid, as the doctors agree – cf. Maschat, *Institutiones Canonicae* ad titulum de rescriptis, § II, n. 12; chapter on letters 20 of this title; chapter 2, part thereof; chapter 19 of the same title. Reiffenstuel, *Ius Canonicum Universum*, ad hunc titulum, § VII, n. 162. In the second chapter, the advocate argues from canonical equity. Therefore, recalling the office of equity, namely, to temper the severity of the law, he revokes the miserable state of the mansionaries, saying that they are present daily in the choir; that they perform the same offices as the canons; that they are obliged to celebrate thirty Masses each year, almost without remuneration. For the canons, who are

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especially assisted by their work, receive 4250 florins annually, which the patrons distribute among their clients, according to their diligence and the established order. This remuneration, moreover, is scarcely borne with equanimity by a servant; scarcely would he dare to offer it to the Chapter! The advocate does not deny that the canons have, in recent times, received a portion of the distributions among the present, which are usually given on anniversaries or supplications; but he says that, from such a grant, the adversaries gain more advantage than the clients. For it is well known in Andria that the Cathedral Chapter, many years ago, made an agreement with certain sodalities, so that more canons might attend just funerals or assist in performing them. – As the number of canons decreased, so that the services would not be broken, all, or almost all, had to be present; and, since this was a very serious matter, it seemed useful to grant something to the mansionaries, so that they might assist the canons who were overburdened. – But only half of what the canons receive was granted: so that, if two florins are distributed to a canon, one florin is given to a mansionary, who bears the very same burden. Then, anticipating an objection, he observes that it is not true...

[*Latin ed. p. 42*]

42 ANDRIEN. Since the Canons have already been deprived of funds from the treasury, they would be even more burdened by having to support the Mansionaries. For the speaker observes that the total revenue from the Mass offerings, after deducting taxes, amounts to at least 27,399,39 livres. Indeed, the Chapter has testified that it receives 30,218,86 livres annually from the Mass offerings. After deducting 4250 livres allocated to the Mansionaries, the remainder is distributed among the twenty-five Canons, each of whom receives 925.97 livres. In addition, the speaker insists, there are fifteen prebends, estimated to yield nearly ten thousand livres after taxes are deducted, of which all the Canons participate equally, so that each receives approximately 400 livres. Add to this 1127.32 livres, which, as a third part of the prebends, are paid annually by the Chapter to the four dignities, which have long been vacant, for the purpose of daily distributions. Add also six minor benefices, the fruits of which have already been collected by the treasury, or will soon be collected, so that, as soon as the Canons are reduced to twelve in number, only those Canons themselves will profit from them. Add also the distributions among the present members; the incidental revenues, and the sums frequently paid for composition, increase the Mass offerings day by day. In contrast, the Mansionaries can scarcely receive 85 livres if they avoid choral duties. But the injustice, the speaker argues, grows enormously if one compares the current situation of the Mansionaries with that of their predecessors. The former, with almost no obligations, enjoyed the same benefits from the Mass offerings as the Canons, so that today, if their rights were to increase, they would receive 9835.70 livres; but

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this right is denied to them, and they seek only 5901.42 livres annually. Currently, the Mansionaries can scarcely obtain 4250 livres through arduous labor. Their income increased when a place was vacant in either the Canon or Mansionary college. The condition of these latter can worsen if one of the Canons dies, as the choral duties increase, and the conventual Masses become more frequent; but their wages cannot be increased; indeed, they are even restricted, so that the income from the vacant Mansionary does not go to the surviving college, but...

[*Latin ed. p. 43*]

ANDRIEN. Quaerit, num quadraginta tres vel mansionarii honorarii stipendium accipient, sicut legitur in libello supplicatorio a Sacra Congregatio confirmato, velne totum in celebrationem missarum erogetur, ut decrevit Episcopus, qui concessionem Summi Pontificis, missas ad numerum trecentarum redigentis, auctoritate propria confirmavit. Illi libellarum 3,82 stipendium pro quaque missa accipiebant: hi vix 2,80 libellarum accipiunt. Deinde, considerans patronus, qualis sit ratio ob quam Sacra Congregatio confirmavit hanc non aequam distributionem bonorum; videt certe hoc factum fuisse ob duplicem rationem ab Capitulo in libello supplicatorio subiectam: nempe, quod massae reditus post bonorum distributionem valde minuerentur, et quod infelicissima esset conditio clericorum qui, supra legitimum numerum, ad canonicatum provecti sunt. Sed contra, instat, huiusmodi rationes fundamento carent. Nam primum, extenuatis reditibus, omnium portionem decrescere oportet; non ita diminutio haec fieri potest, ut totum adipiscantur canonici, nihil vero mansionarii vel paene nihil. Quoad alteram vero notat, canonicos non iure merito querere, si enim praeter legitimum numerum, alios in capitulum canonicos admittere voluerunt, sibi imputent necessariam redituum communium diminutionem et novarum praebendarum paupertatem. Cum vero Episcopus ipse proposuerit quoddam concordiae schema in qua opinatur mansionariis quattuordecim partes totius massae missarum, dispartitae in sex et sexaginta portiones, ex aequitate destinandas esse, advocatus non approbat condiciones, quibus Episcopus huiusmodi concessionem circumdare vellet. Nam quia hic ex parte mansionariis aliquid decerpere vellet ad instituendum mansionariorum honorariorum quoddam collegium; observat patronus, absonum esse, tam exiguam partem ulterius dividere, et omnino esse supervacaneam collegii honorarii mansionariorum institutionem. Nec diversum de aliis conditionibus iudicium fert orator. Nam missarum stipendium, prosequitur Episcopus, imminuendum est.

[*Latin ed. p. 44*]

44 ANDRIEN. "Fundamentum hujus summae." Sed haec ratio etiam canonis aptissime convenit, dixit patronus, et ridiculum est, quaerere a

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mansionariis mercedem pro missis conventualibus, quae iam antea deductae sunt ex stipendio aliarum missarum. Deinde patronus, respondens ad obiectionem ab adversariis motam, nempe mansionarios inconditionate approbavisse collegium mansionariorum anno 1886 erectum; observat clientes suos, erectionis consilium et decretum ratum habuisse, quia non sufficienter fuerunt instructi de novi collegii conditionibus, spe allecti, in futurum mansionariorum statum ampliorem et ditiorem evasurum esse. Quae spes, etsi levissima, non poterat non arridere pauperibus sacerdotibus, omni subsidio prope destitutis. Tertium caput aggrediens orator, disserit de norma in novo decreto servanda, quam tamen fatetur iam negative se expressisse, docens quomodo vetus decretum reformandum sit; et quatenus aequitati locus dandus sit; nec non confidit, B. E. P. P. adhaerere velle conditionibus iam a se declaratis in schemate concordiae, capitulo propositae. In capite quarto, agens orator de modo quo distribui debeat pecunia massae missarum in dies exaugentis, notat, compertissimum esse, summam 4250 librarum, mansionariis assignatam, praefinitam fuisse, habita ratione redituum, qui, tunc temporis, missarum massam conflabant. Haec enim leguntur in supplici capituli libello, quem S. C. C. solemniter confirmavit: "Dal reddito annuo della massa delle messe, che diminuito per la sottrazione fatta dalle attuali leggi eversive, depurato dalla sovraimposta, ed inclusa la porzione spettante al canonico arciprete parroco, ammonta a L. 30,218,86 si preleveranno etc." Nec aliter in episcopi decreto: "Ex reditibus, ut nunc iacent, per integrum sint dictae missarum massae destinabuntur etc." Accrescentibus ergo massae reditibus, in casum incidimus, de quo nihil in lege constitutum est. Non enim prohibetur quidquam lucrari mansionarios, cum capituli fortuna convalescat. Imo advertit,

[*Latin ed. p. 45*]

ANDRIEN. 45. This communion of goods must necessarily be admitted by right of accrual, which applies to the present college of canons, just as it applied to the ancient college, of which the present college is a restoration and a renewal; and from this concept, the advocate insists, one must never deviate. Thus, having briefly presented the points at issue, the following questions were proposed: I. Does the matter of the open declaration of wills enter into consideration in this case? And in the affirmative. II. Should the decision of July 24, 1886, regarding the erection of a college of ten canons in this case, be reformed, and if so, how, in favor of the canons? And in the negative, regarding both. III. Do the canons have the right to participate, from the increases in the mass offerings in this case, and if so, how? RESOLUTION. The Sacred Congregation, after deliberation on January 26, 1895, decided to respond: To I, II, and III, negatively, and furthermore; but it is to be requested of the Holy See that the sum of 1750.00 be allocated for the conventual mass, determined for each eleemosyna (charity) at 3.80, both

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for the canons and for the canons; but in such a way that what remains is to be divided among the canons alone, with the obligation of applying the same number of masses with the stated eleemosyna. URGELL. QUESTIONS REGARDING TESTIMONIALS TO THE HOLY ORDERS. January 26, 1895. Through summary petitions. The Bishop of Urgel, on September 12 of the recently past year, sent the following letter to the Sacred Congregation: "The Bishop of Urgel, having carefully considered..."

[*Latin ed. p. 46*]

46. URGELLEN. The following are prescribed in the Apostolic Bull (1), article 2, section III, namely, that Ordinaries incur suspension from the administration of the Orders for a period of one year, if they ordain a subject who has resided elsewhere for such a time that a canonical impediment could have arisen there, without testimonial letters from the Ordinary of that place. Furthermore, this Holy Congregation's resolution of September 9, 1893, is cited, in which it is determined that these testimonial letters are necessary when a subject is delayed elsewhere for a period of three months. This Holy Congregation explains: (2) It frequently happens that young students travel through various dioceses, either due to military service or for other reasons; so that it is not uncommon for them to have resided in several dioceses for a period of three months. Indeed, there may be no one who can provide testimony regarding their birth, age, character, life, reputation, condition, knowledge, or whether they have been subject to any censure, irregularity, or other canonical impediment; since, in most cases, they are completely unknown, especially in populous cities, in which they have resided for a short time. "With these considerations in mind, this Holy Office presents the following questions:

1. Whether, in all cases, testimonial letters from all the Bishops of the places in which the subject has resided are absolutely necessary for the ordination of a subject, or whether it may be left to the prudent judgment of the Ordinary, taking into account the circumstances of the subject being ordained.

2. Whether an Ordinary who ordains a subject without these testimonial letters from the foreign Bishop, in all cases, incurs, by law, suspension from the administration of the Orders for a period of one year.

3. Whether the testimonial letters of a foreign Bishop are sufficient, when he testifies that nothing is known about the person to be ordained; because there is no one who can provide testimony about the person to be ordained, since he is, as it is judged, completely unknown.

(1) The Apostolic Constitution, referred to in Volume V, 287.

(2) Compare Volume XXVI, 428, where the request regarding testimo-

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nial letters for ordinations is mentioned, concerning Fermo.

[*Latin ed. p. 47*]

URGELLEN. 47 u m « 4. Whether, in this case, it suffices to present to the officials of the parish, in which he has resided, or to the officials of the Episcopal Palace, letters from the diocesan Bishop, ordering all and each who examine them to show whether it is known to them of any canonical impediment to ordination. » In a synoptic discussion concerning the questions proposed by the Bishop, it was noted that, rather than rigor, indulgence ought to be used, as Innocent XII's Constitution "Speculatores" prescribes the necessity of testimonial letters only in the case of a prolonged stay in that diocese, in which someone was born and has resided, which is sufficient to incur a canonical impediment. Although the Constitution "Apost. Sedis," extending the Innocentian Bull to cases not expressly mentioned, has established that a suspension from the administration of the sacraments for a year, by its own right, is incurred by those who have resided elsewhere for so long that they could have incurred a canonical impediment there, without testimonial letters from the Ordinary of that place; nevertheless, this prescription does not seem to be so urgent, that anyone should be equipped with as many testimonial letters as there have been places of even not prolonged residence, which can be almost innumerable, especially for those devoted to military service. Otherwise, the law would become too harsh, involving those ordaining and those to be ordained in inextricable difficulties. On the other hand, it is observed that, even before the Constitution "Apost. Sedis," the Sacred Congregation of the Holy Office, following the spirit rather than the letter of the Innocentian Constitution, as can be seen especially in the documents of Spoleta and Reatina, July 11, 1840, recognized the necessity of letters from the Ordinaries, in whose dioceses those to be ordained have remained for a longer time. After the promulgation of the Constitution "Apost. Sedis," from the practice of the Roman Curia and others, and also from the intention of common law, as taught by the learned Santi - lib. I. - App. ad tit. XI, the time of prolonged residence, from which the Bishop of that...

[*Latin ed. p. 48*]

48. URGEL. Investigations are undertaken concerning testimonial letters regarding the conduct of those to be ordained, and a period of six months has been determined. Subsequently, due to unjust laws, clerics are subjected to military service, and the necessity of more carefully monitoring and inquiring into the conduct of those who, having completed their military service, persevere in the sacred vocation has become apparent. Therefore, the Sacred Congregation of the Holy Office, on September 16, 1875 (1), issued an Instruction to the Ordinaries of the various places, concerning the manner in which vigilance should be exercised over

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clerics deserving stipends within their Dioceses, with the primary aim of ensuring that the Bishops are better informed about the conduct of such clerics before their Sacred Ordination. However, in this Instruction, nothing is said about testimonial letters, but rather, the matter concerns secret vigilance and reporting regarding the conduct of such clerics. Regarding these testimonial letters, a Decree was issued by the Sacred Congregation for Religious Discipline on November 27, 1892, prescribing that religious students addicted to military service, who subsequently return to the Religious Family, should not be ordained without testimonial letters from the Ordinaries in whose Dioceses they have resided for at least three months (2). Furthermore, the Most Reverend Senate decided to extend this prescription to secular clerics. For, on September 9, 1893, in Fermo, concerning the "Petition regarding testimonial letters for ordinations" (3), the question was raised: whether clerics, having resided in various places during their military service, could be ordained without testimonial letters from the Ordinaries in whose Dioceses they had resided for some time. The response was: "Testimonial letters are necessary whenever the candidate has resided in a Diocese for at least three months." Therefore, it is not permissible to doubt that a general law has been established for all Ordinaries. Having become aware of this law, the Bishop of Beja made certain inquiries, first asking whether such a prescription equally applies to all clerics, even if they have not personally experienced this situation.

(1) Recole, Vol. XXIII, 40, where the Instruction, of which mention is made, is reported.

(2) Recole, Vol. XXV, 635, where the prescriptions regarding young men from religious families who are subject to military service are reported.

(3) Fermo is reported in Vol. XXVI, 428.

[*Latin ed. p. 49*]

URGELLEN. 49 Regarding the matter of military service. But if the Postulation concerning the cause of Firman is considered, it seems clear that the response pertains only to clerics devoted to military service. Secondly, it is asked whether one who violates this law incurs the suspension threatened by the Constitution "Ap. Sedis." It does not seem doubtful, since the Declaration of the Sacred Congregation of the Council of Trent appears to interpret and determine only those words of the Constitution: "who has remained elsewhere for so long a time that he could have incurred a canonical impediment there." Thirdly, it is asked whether negative testimonial letters, or those which state that nothing, neither good nor bad, is known about the cleric, are sufficient, as is often the case, since soldiers residing temporarily in populous cities are almost always unknown to everyone. Indeed, it seems that it cannot be denied that testimonial letters ought to provide some positive knowledge about the morals and life of the cleric; otherwise, they would be said to be illusory. Therefore, in the absence of

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such letters, the Sacred Congregation of the Council of Trent usually orders that permission be granted to supplement this deficiency through a so-called suppletory oath, because it supplements the testimony that must be provided by letters from the Ordinary. Moreover, the Sacred Congregation of the Council of Trent often grants to tribunals the faculty of requiring such an oath from the cleric in these circumstances. Finally, fourthly, it is explained whether, in the absence of testimonials, it is sufficient to affix an edict to the doors of the parish in which the ordinand has resided, as well as to the doors of the Episcopal palace, inviting all the faithful to testify about his conduct. Clearly, in a matter of such importance, no diligence or rigor seems superfluous. With the foregoing points noted, the question was raised as to how one should respond to these doubts. SOLUTION. After discussion by the Sacred Congregation of the Council of Trent on January 26, 1895, it was decided to respond: For clerics being ordained, who are already devoted to military service, under the penalty threatened by the Constitution "Ap. Sedis," letters of recommendation from the Ordinary are required, from the diocese in which they have resided for three months; and to the extent that the letters of the Ordinary do not provide complete testimony, the Bishop, having obtained this, Acta, Vol. XXVIII, page COOXXV.

[*Latin ed. p. 50*]

50. URGENT MATTER. With the authority granted by the Apostolic See, it should be provided through a supplementary oath. FROM WHICH YOU MAY GATHER: I. Those already devoted to military service must present letters of attestation from the Ordinary of any diocese in which they have resided for three months, in order that they may be able to be promoted to the Sacred Orders. II. Whenever the letters from the Ordinary do not fully constitute proof, the Bishop, before conferring the orders, may request a full testimony through a supplementary oath, having first obtained the necessary authorization from the Holy See, if he wishes to avoid the suspension threatened by the Apostolic Constitution (1). BEJA. DOUBT REGARDING THE BISHOP'S OWN ORDINATION. January 26, 1895. Through Summary Petitions. SUMMARY OF THE CASE. The Bishop of Beja, after receiving the response given to his petitions concerning the Bishop's own Holy Ordination, and moved by a doubt regarding the interpretation of the text, further requested a solution from the Apostolic See to the following question, as proposed by himself: "On April 26, 1894, I proposed the following doubts to the Sacred Congregation of the Council: (2) "Doubt 1 - Can a Bishop, in accordance with the decision of the Sacred Congregation of the Council of August 2, 1721, § 5°, ordain his own family member, who is not subject to him, to a title of pension, if he has previously obtained from the Government a perpetual treasury to be enjoyed in his own diocese? " "Doubt 2 - Can he also, in accordance with the decision of

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the Sacred Congregation of the Council of September 17, 1791, § 7°, if these treasuries are considered..." (1) Regarding the letters of attestation for the conferral of the Holy Orders, see Vol. XIV, 392-398. (2) See Vol. XXVII, 230.

[*Latin ed. p. 51*]

"BEIEN". 51. By their perpetuity, can they still be considered, as examples of benefices, so that a young man might be ordained without being subjected to a patron, when he has obtained from the Government the perpetual possession of the parochial treasury in his diocese? "Regarding these doubts, the Most Reverend Em. Cardinals, Interpreters of the Council of Trent, on April 11, 1894, decided to respond affirmatively, provided that it is established that the treasuries are truly and properly benefices." "In my judgment, these parochial treasuries are truly and properly ecclesiastical benefices, for they possess all that is required of benefices, namely: 1°. Their erection was made by a legitimate superior authority. 2°. They have a title or church, where the benefice is established. 3°. They have a spiritual office. 4°. They have perpetuity and residence. 5°. They have revenues from which the beneficiary is sustained." "Thus, the Canonists generally state, such as: Fagnanus in I L. Decret. De rescript, c. Ad audientiam; Ferrari L. II, tit. XV De beneficiis ecclesiasticis; Devoti Inst. Canon. L. II, tit. X I V, and others." "However, all of these are found in the parochial treasuries:" "1. They were erected together with the parishes in which they are established, because the decree of their creation is the same as the decree of the creation of the dioceses of Transitania and their parishes, which occurred after the Moors were expelled from Lusitania by King Alphonso Henry, around the year 1200 of the Christian era." "2. The titles of the parochial treasuries are the same as the parochial churches, which were erected together with the treasuries." "3. The parochial treasuries certainly have a spiritual office. What else is the duty that the treasurers have, which is to strike the bells and open the church, to take care of the things that are within the church, to open the house of God to the faithful at certain hours, and to close it to the unfaithful; to carry the processional cross, and to light the lights of the church, to minister the wine and water for the Eucharist, to respond to the priest celebrating the Mass, and to administer the other sacraments, to co-"

[*Latin ed. p. 52*]

52. "Are not parish treasurers, who assist the pastor in matters of administration and in supplications and funerals, truly and properly engaged in spiritual office?" "4°. There is no doubt that parish treasurerships are perpetual; for in the matters proposed, on April 26th of this year, I have already made it certain that the Portuguese Government would appoint them perpetually to the parish treasurerships." "Hence, it is clearly evident that they possess perpetuity." "Indeed, the treasurers have the burden of residence, because the pastors cannot fulfill their ministry without the

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participation and assistance of the treasurers." "5°. Parish treasurers have revenues from which the treasurer is supported; for each year, each parishioner contributes a certain portion of grain to the treasurer, which in the Portuguese language is called 'bolo,' from each rural estate, for the support of the same treasurer. Furthermore, the treasurers, like the pastors, receive offerings and emoluments on the occasions of Baptisms, Marriages, Funerals, and on the more solemn feasts of the parish church." "Therefore, if parish treasurerships have all that is required in benefices, as I have demonstrated above, I have no doubt that they are truly and properly ecclesiastical benefices. However, I most reverently implore the Most Eminent Cardinals, Interpreters of the Holy Council of Trent, to declare whether, from the foregoing, the parish treasurerships in Portugal are truly and properly ecclesiastical benefices." After these preliminary remarks, the question was asked: what should be answered?

RESOLUTION. The Sacred Congregation, after deliberation on January 26, 1895, decided to respond: "According to what has been presented, it does not appear that the treasurerships are true and proper benefices; but, considering the particular circumstances, the Bishop is granted the faculty of establishing them as sacred patrimony; provided that perpetual appointment is obtained from the Government; and, in the case of a cleric from another Diocese, the consent of his own Bishop is obtained, after consultation with the Holy See."

[*Latin ed. p. 53*]

55 FROM THE HOLY CONGREGATION FOR RITES: A question regarding the use of electric light. To the Ordinary authorities of various places, it has been repeatedly and recently inquired whether the use of electric light is permitted in churches, both to dispel darkness and to enhance external splendor. Recently, a question was presented to the Sacred Congregation for Rites: "Can electric light be used in churches?" Therefore, the Most Reverend Fathers, entrusted with safeguarding the sacred rites, in the Ordinary assemblies held at the Vatican on the following date, deemed it necessary to respond as follows: "For the liturgy, No. But to dispel darkness and to illuminate churches more brightly, Yes; however, care must be taken that the manner does not give the appearance of a theater." And so they responded, and it was ordered to be observed on June 4, 1895. C. CARDINAL ALOISI-MASELLA, Prefect. L. CARDINAL ALOISIUS TRIPEPI, Secretary. QUESTIONS concerning the office of members of the patronal or titular brotherhood, etc. The Reverend Alberto a Drunen, Provincial Minister of the Order of Capuchins in the Province of Holland, humbly petitioned the Holy Congregation for Rites for a declaration concerning the following questions. I. By Decree of the Sacred Congregation for Rites of July 12, 1889, in Ruremunden, concerning Question IV, it was declared that the rubric recently revised, which prescribes that nothing should be done concerning

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the members of the patronal or titular brotherhood if they are described as holding a double minor office, but not that of a Doctor of any church, or a semi-double office, is not retroactive, and therefore the office concerning them should still be performed today, as it was previously required to be done. Hence, the question arises, now that the new Calendar of the Order of St. Francis of Assisi Capuchins, approved by the Sacred Congregation for Rites on August 27, 1893, has been revised, whether the office concerning the members of the patronal or titular brotherhood should still be performed by us, as before, especially since the days on which the aforementioned...

[*Latin ed. p. 54*]

54. Do members of the Congregation of Holy Orders, who previously experienced difficulties, no longer find themselves mentioned in the aforementioned calendar of the new book?

II. Do Regular Canons, who possess their own calendar and already celebrate the Dedication of All Churches of their Order, celebrate the Dedication of All Churches of the Kingdom in the region of Holland, under a double rite of the first class with the Octave, on the Sunday immediately following the Octave of the Feast of All Saints, as is done in France and Belgium, or rather, do they celebrate the Dedication of All Churches of the respective Diocese, where this Dedication is celebrated on another day, namely the Anniversary of the Dedication of the Cathedral Church?

III. According to the most ancient custom and according to Apostolic Indults, as is also evident from the ancient and more recent Breviaries of the Order of Capuchins, do the Friars Minor of that Order, even during the seasons of Lent and Advent, on days that are not prohibited, recite, under a semi-double rite, the votive Offices of the Immaculate Conception of the Blessed Virgin Mary on Saturdays, and of Saint Francis and Saint Clare of Assisi once a month? The question is asked whether such a privilege extends to the feasts of the season of the Passion and to the feasts of Advent, which extend from the 17th of [month unspecified] until December 14th, or to Vigils and to the four seasons, occurring at any time of the year?

And the Sacred Congregation of Rites, after a most diligent request from one of the Masters of the Apostolic Ceremonies, and after mature deliberation on all matters, decided that the following answers should be given:

I. Negatively.

II. Regular Canons, in this case, celebrate only the Anniversary of the Dedication of All Churches of the Order, on the established day; and the Dedication of the Cathedral Church, if they reside in an Episcopal city, under a double rite of the second class without the Octave.

III. Negatively, in all cases.

And so it was declared.

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June 22, 1895.

C. CARD. ALOISI-MASELLA,

S. R. C., Prefect.

L. © S. ALOISIUS TRIPEPI,

S. R. C., Secretary.

[*Latin ed. p. 55*]

FROM THE SACRED RITUALS, 55, OF SAN MINIATO: Concerning the beatification and canonization of the venerable servant of God, Theophilus of Curte, a professed priest of the Order of Friars Minor of the Observance of Saint Francis.

ON THE QUESTION: Whether, with the approval of his virtues and two miracles, it is safe to proceed to the solemn beatification of the Venerable Servant of God? Furthermore, the Venerable Theophilus, who bore the name bestowed upon him, which signified his most auspicious love for God, demonstrated this very love throughout his life, lived holily and integrally. This was published by the Curia in the year 1676, and he was subsequently added to the ranks of the Religious Order of the Observance. In this, he was unwavering, so that not only did he himself, a most ardent cultivator of virtue, exemplify the fruits of divine love, which are found in all goodness, justice, and truth, but that others also, deserving of merit under the banner of the Church, might perceive the greatest abundance. Therefore, he sought nothing more than to constantly advance the work of religion, by adding stricter discipline in monasteries, by guiding men away from wickedness, and by vigorously defending the Catholic faith against the errors of the times. Through great difficulties and labors, especially in Etruria, all kinds of heavenly gifts and prodigies were granted to Theophilus, so that they seemed to support him and inspire such admiration in all, that he was often praised as being second to none in his age in enduring the trials of Christ, and as a perfect example to others to imitate. And so, having attained the rewards of such virtues, he exchanged this earthly life for heavenly life in the forty-sixth year of his age, and is considered to have filled a most distinguished reputation among mortals, both through the monuments of his sanctity and through miracles, leading all to his sacred remains. Therefore, it was not surprising that, after an examination of all these things, a cause was instituted not long ago before the Sacred Congregation of Rites for the granting of the honors of the Blessed in Heaven to him. And after, with the passage of time, investigations into the matter, and other proceedings rightly completed according to the law, the Blessed Pope Pius VIII, with singular praise, recognized the heroic virtues

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of the Venerable Theophilus, and decreed that he had reached the heroic pinnacle, by a decree issued on the 16th of September, in the year 1817. Finally, another decree was solemnly promulgated on the 10th of June, for this...

[*Latin ed. p. 56*]

In the year 1785, in order to justly vindicate the truth, even of miracles, the Most Holy Pope Leo XIII declared, with the full authority of the legitimate Apostolic See, that a double miracle had occurred through the intervention of the Venerable Theophilus, adding strength to this testimony. And the Most Blessed Father, marveling at the exceptional sanctity of Theophilus, who, having been consecrated by the illustrious significance of miracles, bore within himself a soul that he believed would bring great happiness to many, testified that he wished to honor the faithful children of the Church with great honors, whose example and support would help even those who are estranged to return healthily to the bosom of the same holy Church. All was done so that, in order that the cause, already so joyful for all, might finally reach its peak, nothing would be lacking except that there be presented for discussion the doubt as to whether the Venerable Servant of God would be safely raised to solemn and public worship, which is fitting for the Blessed. This was accomplished by the Most Reverend Cardinal Vincent Vannutelli, Relator of the Cause, at a general assembly before the same Most Holy Pope Leo XIII, on the fourteenth day before the Kalends of July, in the Apostolic Palace at Vatican. And all who were present, both the Most Reverend Cardinals and the Fathers Consultors of this Congregation of Sacred Rites, with a unanimous affirmation, voted that the double miracle should be declared. However, His Holiness, considering the gravity of the matter, decided to postpone his judgment, seeking further light from the wisdom of Heaven through prayer. Therefore, on this day, which the year commemorates with sacred solemnities, the immortal glory of the Franciscans, Saint Bonaventure, having fulfilled the desires of the inhabitants of Corsica and Etruria, and of the entire Order of Friars Minor, it seemed fitting to the Most Blessed Father to confer the name and honors of the Blessed in Heaven upon the most outstanding hero of religious perfection, who had imbibed the virtues of Bonaventure and had drawn wisdom from his books, in a truly remarkable way: so that, even in our time, those who need it most might have the support of a vigilant spirit, and that He might obtain a new source of strength in God, through the prayers and protection of this man, so that all nations might more quickly embrace the unity of the Catholic faith.

[*Latin ed. p. 57*]

57. In order that the unity of the sacred rites might more quickly be re-

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stored throughout all nations, the Most Holy Pontiff, having completed the most devout prayers in the domestic chapel, while seated on the Pontifical throne in this hall of the Vatican, commanded the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and Vincent Vannutelli, Promoter of the Cause, together with the Reverend Father Augustine Caprara, Promoter of the Holy Office, and myself, the undersigned Secretary, and those present, to proceed with the solemn beatification of the Venerable Servant of God, Theophilus, of the Court. And he ordered that this decree be made public and recorded in the acts of the Sacred Congregation, and that Apostolic Letters, in the form of a Brief, concerning the beatification to be carried out at any time, be issued, on the eve of the Ides of July, in the year 1837.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation.

L. # S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation.

DECREE by which it is established that the Feast of the Annunciation of the Blessed Virgin Mary shall henceforth be celebrated with a double rite of the first class.

It is right and fitting that the Feast of the Blessed Virgin Mary, the Mother of God, greeted by the Angel, which has been instituted from the most ancient times, and which has been celebrated with equal solemnity by both the Latin and Greek Churches, since the Sacred Liturgy proclaims the mystery of the Incarnation of the Lord as the foundation of all other mysteries. Hence, supplications and vows have been repeatedly offered to the Apostolic See, that the Feast of the Annunciation of the Blessed Virgin Mary might be elevated to the highest rank of solemnity throughout the entire Church. Therefore, the Sacred Congregation of Rites, in a special meeting, for the purpose of publishing a new authentic collection of decrees, held at the Vatican on the date indicated, after mature deliberation, decided that the Feast of the Annunciation of the Blessed Virgin Mary, which occurs on March 25th, shall henceforth be observed throughout the entire Church with a double rite of the first class, with all the proper rights of major feasts, even though it lacks an octave, due to the reason of the Quadragesimal season. Furthermore, whenever this Feast is hindered, either on a weekday, or on the eve of the Sabbath, or on the Holy Sabbath itself, it shall be celebrated, as before, on the second day after Sunday in Albis; and it shall be celebrated with all its solemnity and with a feria, and without an octave, as on March 25th. When, however...

[*Latin ed. p. 58*]

58. IN THE SACRED RITES, the Office shall be impeded only if it is prescribed for the aforementioned Feria II; and it shall only be able to be impeded if a primary feast of the same rite occurs. In this case, it shall be transferred to the following day, which shall likewise not be impeded. April 25, 1895. Subsequently, these matters were reported to His Most Holy

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Lordship, POPE LEO XIII, by the undersigned Cardinal Prefect of the Congregation of Sacred Rites; and His Holiness deigned to ratify and confirm the judgment of the aforementioned Sacred Congregation. May 27, of the same year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites.

L. S. ALOISIUS TRIPEPI, Secretary of the Sacred Rites.

ROMANA, or LUCENSIS, concerning the beatification and canonization of the venerable Servant of God, John Baptist Cioni, a professed priest of the Congregation of Regular Clerics of the Mother of God, and the first member of Blessed John Leonard.

ON THE QUESTION: Whether it is established that the theological virtues of Faith, Hope, and Charity towards God and neighbor, as well as the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, together with their associated qualities, were present in a heroic degree, in the case and with respect to the person under consideration?

Having entered the footsteps of Christ from his youth, the Venerable John Baptist Cioni strove to inspire others, especially with that particular exhortation and compendium of evangelical perfection: "In your patience you shall possess your souls." Therefore, in Lucae, where he was born in that ancient Etruscan city, and in other places, in order to be an aid to the Christian cause, he endured the most difficult things, and he greatly aroused the expectation of the provident counsel of God, who, in a time of great hardship, due to the calamities inflicted upon the Church by the Protestant heresy, raised up a new and perfect hero, whose ecclesiastical virtue should be emulated by others. Despite countless sorrows, he was never led astray, but, with the integrity of his life, the study of penance, and with prayers prolonged both day and night, he was compared to the greatest, waging war against error throughout almost all of Italy.

[*Latin ed. p. 59*]

From the Sacred Ritual, number 59, it would indicate that he was progressing; he restored the arts of piety to their former glory, having composed his manners anew to the demands of his office; he quelled the contentions of citizens, not broken by calamity, nor deterred by threats; and he spared no labor, from which the good of religion might be drawn. Indeed, it was said that he rather preferred to cultivate rocks and crags, than, through injuries inflicted by popular leaders or through snares laid by the devil, to neglect the Venerable Cioni, who, not only the first and most closely united with all the members of the sodality, but also a companion in holiness, devoted his efforts to the assistance of Blessed John Leonard, the founder of the new institute, in winning souls to Christ. Furthermore, to his other companions, through counsel and the management of affairs, he was the author of improvements, which contributed to the defense of the

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rights of the Church and to the advancement of the praise of the recent Order. Thus, he completed all the virtues in an exemplary manner. And, moved by the spirit of God, he faced death not only without fear, but even with eagerness, desiring to suffer martyrdom for the name of Christ, and to obtain the crown that he had certainly earned, which, according to St. John Chrysostom, is obtained not only by the event, but also by the will of martyrdom. So that the fame of the Venerable Cioni, which had spread more and more with the passage of time, might endure for ages to come, it was affirmed that he possessed the grace of miracles, and that, through the love of all who were united to him and the light of his charisms, he was singularly distinguished; Blessed Leonard was presented as an intercessor with God; and, Lucca, having been compelled to leave, before others, the most excellent of his companions, he entrusted his departing group to him; and the voices of the people, and of the members of the sodality, who were devoted to him by the Mother of God, were accustomed to call him by the names of Angel and Apostle, and to think of nothing else, nor to strive for anything else, than the honor of God and the salvation of the nations. From the year 1623, when, exhausted by his labors, he was taken to the eternal joys of God, the memory of him increased, and took deeper root in the hearts of the people, and admiration for the most holy priest was increased by miracles, by which God was said to have worked through the sanctity and precious relics of his servant, so that a devotion to the Blessed was diligently cultivated, for the cause of the Holy Roman Church. And so that this might attain its most desired goal, safely and securely, after being thoroughly investigated and abundantly confirmed by evidence, and after all other requirements had been fulfilled, a threefold examination of heroic virtues was carried out. Firstly, in a previously arranged meeting at the house of Cardinal Aloysius Macchi, the Relator of the Cause, which was held on the day after the Kalends of January in the year 1890; secondly, in...

[*Latin ed. p. 60*]

60. From the Congregation of Sacred Rites, prepared for the Apostolic Palace at Vatican, convened on July 4th, 1819; the third session of which was held in the general assembly at the same place, before His Most Holy Lord Leo XIII, Pope, this year, on the 14th of June. In this last consultation, the Most Reverend Cardinal Aloysius Macchi proposed a question for discussion: Whether it is established that the Theological Virtues of Faith, Hope, and Charity, both towards God and towards neighbor, and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, along with their associated virtues, were present in the Venerable Servant of God, John Baptist Cioni, in a heroic degree, in the case and with the effects of which we are speaking? And all the Reverend Cardinals and other Consultor Fathers added their votes individually. The Most Blessed

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Pope, however, considered it fitting to declare that the Venerable Cioni, throughout his life, had cultivated heroic virtues, both moral and theological, especially in caring for and promoting the salvation of souls. Nevertheless, as is customary, He reserved His decretal judgment for an opportune time, although He was confident that it would fully answer the hopes of others, with the help of divine light. Today, however, on this Sunday, the sixth day after Pentecost, He considered it fitting to render due praise and to offer deserved honor first to that same most beloved Leonard, whom He follows with particular devotion; all the more so because he is an absolute example of virtue for all to imitate, and a new source of comfort to the maternal Church in the Venerable Cioni, who, in turn, will receive the honors decreed for him and will enjoy heavenly blessings, fulfilling the wishes with which the Supreme Pontiff constantly strives to promote the cause of Christ, diligently and with great effort, especially in these times of division. Therefore, it pleased the Sacred Congregation to have this Vatican hall approached, and the Pontifical throne approached, and the Most Reverend Cardinals Caietan Aloysius Masella, Prefect of the Sacred Congregation, and Aloysius Macchi, Relator of the Cause, together with the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, were present; and in their presence, He solemnly declared, with the highest authority: "It is established that the Theological Virtues of Faith, Hope, and Charity, both towards God and towards neighbor, and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, along with their associated virtues, were present in the Venerable Servant of God, John Baptist Cioni, in a heroic degree, in the case and with the effects of which we are speaking, so that..."

[*Latin ed. p. 61*]

From the Sacred Congregation of Rites, number 61, it is possible to proceed further, namely, to the discussion of three miracles. Furthermore, this decree was ordered to be published among the people and recorded in the acts of the Sacred Congregation, on the eve of the Ides of July in the year 1837. [Signed:] Cardinal Aloisi-Masella & Prefect of the Sacred Congregation. L. © St. Aloysius Tripepi. "Cf. Sacred Congregation Secretary."

From the Sacred Congregation of the Holy Office and the Inquisition, concerning the manner of venerating the Blessed Virgin of the Sodalitas Issodunensis, and concerning images of the same Blessed Virgin. Thursday, April 3, 1895. In the Most Holy Congregation of Cardinals and Religious Fathers against heretical depravity, the General Inquisitors, it has been decided not once, but repeatedly, to prescribe a norm for the Archiconfraternity of Rome and the Sodalitas Religiosorum Issodunensis concerning the veneration of the Blessed Virgin, the Mother of God, Mary, under the title of Our Lady of the Sacred Heart of Jesus, and concerning images of the same Blessed Virgin, which represent her standing with outstretched

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hands and the Child Jesus standing before her. It was decreed that the title might be admitted, but the images were not approved, and were to be removed from public veneration, and tolerated only in the church of the Sodalitas Issodunensis; and that, as far as possible, images of the Blessed Virgin Mary holding the Child Jesus in her arms should be introduced. It was hoped that these prescriptions of the Most Holy Congregation would be received with due obedience and faithfully carried out. But, contrary to this, it was discovered with sorrow that the images that were not approved were again printed in numerous copies and distributed among the faithful, contrary to the decrees and the intention of this Sacred Congregation; furthermore, two books were published, which are entitled "Chemin de la Croix du Sacré Cœur" and "Le Rosaire de Notre Dame du Sacré Cœur"; and in these books are found ancient practices that have been approved and recommended by the Church, and are used daily in...

[*Latin ed. p. 62*]

From the Sacred Roman Inquisition, mindful of the great benefit these pious devotions bring to the faithful, they are transformed into another form and figure. Therefore, the Sacred Order, deeply concerned about the law of faith, which must correspond to the law of belief, after mature deliberation, confirming previous decrees and, where necessary, innovating, again condemns the images mentioned above and forbids them to be presented for the veneration and piety of the faithful, and where they have been tolerated, it commands that they be carefully and prudently removed, and that approved ones be substituted in their place. Furthermore, the books mentioned above, and others similar to them, are again condemned and prohibited, and it is forbidden that new formulas of prayer contained in them, or in any of them, be recited publicly, and that they be kept from any public use. It is also necessary to recall here the general warning added to the decree of the feast of January 4, 1875, which reads as follows: "Furthermore, the Same Holiness also commands through this publication that other writers also be warned who sharpen their minds on these and other similar arguments, which seem to suggest novelty and who, under the guise of piety, seek to promote unusual forms of worship even through periodicals, that they desist from their purpose, and that they understand the danger of leading the faithful into error, even concerning the dogmas of the Faith, and of giving weapons to the enemies of religion to undermine the purity of Catholic doctrine and true piety." (1). (1) See Vol. VIII, 269 and Vol. XXV, 749.

[*Latin ed. p. 63*]

65 APPENDIX L exhibiting the acts of the Apostolic See; those which have been prepared for a long time, or which have been delayed in a timely manner, for the moderator of the ephemeris. KXO§Ox>* From the Letter

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of the Sacred Congregation of the Propaganda Fide, July 15, 1876. — (to the Most Reverend Bishop Nesquallien, concerning Catholics interested in the choral performances of the Masonic sect). Among the doubts presented to the Holy See last year, in the year A. Tua, there was also this: concerning the choral performances which are frequently held by those who are commonly associated with the society known as the Freemasons; namely, it was inquired whether the aforementioned Catholics, by attending such choral performances, incur the excommunication imposed by the pontifical Constitution of the Apostolic See, paragraph 4. Furthermore, this controversy, as was fitting, having been brought before the judgment of the Supreme Sacred Congregation of the Universal Inquisition, the Most Holy Fathers, after a thorough discussion of the matter, arrived at the following judgment: Firstly, they observed that it cannot be doubted that grave guilt makes Catholics guilty who attend choral performances and other entertainments which are held by members of the Masonic society, and as such. Moreover, they observed that the pontifical Constitution prohibits, under pain of excommunication, which is incurred by the very act, and reserved to the Holy See, that any favor of any kind be granted to the Masonic sect, or to any society of the same kind; therefore, it must be held as a certain rule for judging whether and when Catholics truly incur the aforementioned excommunication, which, of course, must be carefully considered in relation to the benefit and advantage that the condemned society and its adherents, as such, may derive or may be able to derive from such involvement and assistance on the part of the aforementioned Catholics. Hence, it must be held that Catholics are subject to censure in the case where their presence and participation in such gatherings truly confers some benefit upon the said sect or its adherents. Sacred Congregation of the Holy Office, December 22, 1880. — Concerning the publication of sacred books. Those who are subject to excommunication not reserved to anyone, according to the Apostolic Constitution, are « those who print, or cause to be printed, books dealing with sacred matters without the approval of the Ordinary », but some seek to restrict it to the books of Holy Scripture, and not...

[*Latin ed. p. 64*]

64 APPENDIX II. Alii, contra, affirmant libros quoscumque de rebus in genere ad religionem pertinentes tractantes, ea censura comprehendi. Quaestio est utra sententia teneatur. R. Censura, nemini reservata, inflictam iis qui libros de rebus sacris tractantes sine Ordinarii approbatione imprimunt aut imprimi faciunt, restringenda esse ad librum sacrarum scripturarum, nec non earumdem annotationes et commentarios, minime vero extendenda ad libros quoscumque de rebus sacris in genere, id est ad religionem pertinentes tractantes. Ex. Instr. S. C. S. Officii I Febr. 1871. — Ad Vic. Ap. Myssur. Denuntiatio sectarum cui, et a quo facienda sit. Quaeres

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cui et a quibus fieri denunciationes (circa sectarum coriphaeos) in Missionibus debeant. Obscurum esse minime potest a quibus fieri debent; generale enim est praeceptum, omnibus fidelibus iniunctum. Cui vero sint fieri manifestum quoque est, ei nimirum, qui pro pastorali officio vigilare et cavere debent ne oves sibi concreditae in lupos incurrant, neve peste inficiantur, cuiusmodi est quicumque episcopale vel quasi episcopale munus in Missionibus gerit, Vicarius videlicet vel Praefectus A.p., vel ab eis ad hunc effectum deputatus. Narras (insuper) in tuo Vicariatu Te iussisse scripta, diplomata admissionis in sectas, aliaque earum instrumenta, cum ad sacerdotem deferuntur, comburi, quandoquidem ea servari periculosum valde esse ais. In hac re S. Congregatio prudentiae tuae satis cognitae ac perspectae existimavit; nihilominus si quando scripta occurrant, quae cognoscere Ecclesiae reipublicaeve haud leviter intersit, quantum fieri poterit, curandum erit, ut tuto prudensque modo ad eos, ad quos spectat, mittantur, iuxta dispositionem S. M. Pii VII. in Constitutione Ecclesiam 13 Septembr. 1821 §. Postremo (1). (1) "Postremo, ut omne periculum erroris efficacius auferatur, damnamus et proscribimus omnes carbonariorum, ut aiunt, catechismos et libros, quibus a carbonariis describuntur quae in eorum conventibus geri solent; eorum etiam statuta, codices, ac libros omnes ad eorum defensionem exaratus, sive typis editos, sive manuscriptos, ei quibuscumque fidelibus, sub eadem poena maioris excommunicationis, eodem modo reservatae, prohibemus, memoratos libros, vel eorum aliquos legere aut retinere, ac mandamus, ut illos vel locorum Ordinariis, vel aliis, ad quos eosdem recipiendi ius pertinet, omnino tradant."

[*Latin ed. p. 65*]

APPENDIX 65. I. S. C. Indulgent. 14 December, 1857. — From the Bishop of Petrocorena. Concerning the publication of books without the permission of the Holy Congregation of Indulgences. In the decrees concerning prohibited books, which were added after the Rules of Indiction, the following is read in § III, n. 12: "All books, diaries, summaries, pamphlets, and similar publications in which indulgences are granted, must not be published without the permission of the Holy Congregation of Indulgences." Since several doubts have arisen regarding the interpretation of this rule, the Bishop of Petrocorena and Salatensis, in Gallus, humbly submits the following questions to the Holy See: 1. Whether the aforementioned rule should be understood in such a way that no summaries, catalogs, or pamphlets of indulgences can be printed by the Ordinary himself, without a special permission from the Holy Congregation of Indulgences, even when it is certain that these indulgences are authentic, for example, because he possesses catalogs or summaries printed in Rome. 2. Whether the printing and publication are only prohibited to the Ordinary when it is not certain that these indulgences have already been promulgated by the Holy Congregation.

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Answer: Article 12, § III, of the decrees published after the Rules of Indiction, should be understood and applied in the following way: If the matter concerns the publication of the grant of a particular indulgence, or a summary of indulgences, which is to be taken from an Apostolic Brief or a rescript, or a summary already promulgated by the authority of the Holy Congregation, then it is within the power of the Ordinary to grant permission for the printing of these indulgences (provided that there is no special and express prohibition for any particular purpose); on the contrary, if the matter concerns a summary or collection that has been gathered before, but never approved, or is now being compiled for the first time from various indulgences, then the express permission of the Holy Congregation of Indulgences is required. — Approved on 22 January, 1858. S. C. S. Officii, 24 May, 1703. — From the Bishop of Quebec. Concerning missionaries with regard to barbarians who are baptized or to be baptized. Whether a missionary is obligated to explain all the precepts of the divine positive law to adult barbarians who are baptized or to be baptized, especially all those precepts to which they would find it difficult to submit, so that such barbarians may enjoy the security of conscience, even if they do not observe those precepts which they are ignorant of, relying on the axiom of law: "Lex non obligat, nisi fuerit promulgata" (The law does not obligate, unless it has been promulgated).

Answer: All the precepts of the divine positive law must be explained. Acts, Volume XXVIII, page CCCXXVI. 6.

[*Latin ed. p. 66*]

66 APPENDIX I. Secretum Consilii Sacrosancti Officii, 13 Ianuarii 1892. — De lectura publicationum periodicorum. Quæstio: Utrum scienter legentes publicationes periodicas in fasciculos ligatas, habentes auctorem haereticum et haeresim propugnantes, excommunicationem incurrant, de qua Bulla Apostolicae Sedis 12 Octobris 1869 in excommunicatione Romano Pontifici speciali modo reservatis, art. 2. Respondetur: Affirmative. Secretum Consilii Sacrosancti Officii, 2 Augusti 1768. — Archiepiscopus Scopiensis. An liceat dare et deferre reliquias Sanctorum Turcis. Respondetur: Iuxta Instructionem (iam datam). In hac autem exponitur licitum esse presbyteris catholicis adire domos turcarum, ibique benedicere infirmos et orare super eos pro sanitate corporis et pro illuminatione mentis. Non autem esse licitum relinquere in eorum manibus, ut dicitur, *brevia* (italice *brevetti*) quando adest periculum, ut irreverenter tractentur et eiiciantur; secus vero si missionarii credant non adesse contemptum, et reverenter uti eisdem. Advertantur tamen missionarii ne in huiusmodi *breviis* contineantur reliquiae sanctorum, res inlinctae sacro chrismate, et multo minus si contineant vel immixta sint verba, signa crucis vel characteres quae inducere possint infideles ad actus supersticiosos. Praeterea: *che le orazioni, benedizioni od altre divozioni, che si daranno

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dai preti cattolici ai turchi, si diano sempre gratis senza il minimo emolumento.* Secretum Consilii Sacrosancti Officii, 13 Februarii 1669. — De administrandis sacramentis mulieri, quae occasione matrimonii transiit ad ritum graecum. Quæstio: An Sacramenta ministrari debeant mulieribus, quae occasione matrimonii, ad ritum graecum transeunt, et in eo persistere volunt aut ob gravem metum sibi a maritis incussum, aut ob alias causas quae facile superari possunt. Et quid si sint constitutae in articulo mortis? Respondetur: 1. Satagendum esse ut servetur Constitutio 34 Glem. VIII, qua sancitur ut maritus latinus uxoris graecae ritum non sequatur, et latina uxor non sequatur ritum mariti graeci: graeca vero uxor sequatur ritum mariti latini; quod si fieri non possit, quisque coniugum in suo ritu catholico tantum permaneat. 2. Nemini vere poenitenti in articulo mortis esse deneganda Sacramenta.

[*Latin ed. p. 67*]

APPENDIX I. 67

3. Circumstances of the event must be considered, especially in cases near death; for if the person is contrite, if he does not adhere to schism and the errors of schismatics, or, if he does adhere, he detests them from the heart, and if he cannot return to our rite without danger, he may be admitted to the Sacraments, provided that scandal is absent. But if there is scandal to other faithful, or if they can easily return to the Latin rite, but refuse to do so; or if they are infected with some error of the schismatics, they are to be rejected. However, if only scandal is feared, it must be considered what kind of scandal it is, and whether it can be easily and how it can be removed.

Sacred Congregation of the Holy Office, I September, 1851. — Letter from Quebec.

Regarding the recitation of the Confiteor in the administration of the Holy Eucharist.

Can the Confiteor be recited only once in the administration of the Holy Eucharist and Extreme Unction given successively to a sick person, and also in the application of the Indulgence *in articulo mortis*, when this takes place at the same time as the administration of one or both of these Sacraments?

Answer: If necessity compels the administration of one after the other immediately, it is permissible to recite it once in that case; otherwise, it must be repeated.

Sacred Congregation of the Holy Office, 18 April, 1860. — Concerning the recitation of litanies.

All litanies, except for the very ancient and common ones which are contained in the Breviaries, Missals, Pontificals, and Rituals, and except for the

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Litanies of the Blessed Virgin Mary which are usually recited in the Shrine of Loreto, are not to be recited without a translation and the approval of the Ordinary, nor publicly in churches, public chapels, and processions, without the permission and approval of the Sacred Congregation of Rites.

Decree of the Sacred Congregation of Rites, 31 March, 1821. — Concerning the recitation of litanies.

Is it permissible, under the title of special devotion, to add a verse or verses to the Litanies of the Saints or the Lauretan Litany, or to recite new litanies, concerning whose approval there is no certainty, in churches?

Answer: No, and the decrees of the Sacred Congregation must be observed entirely, and the Ordinaries must take care to collect and prohibit any formulas, whether printed or manuscript, of litanies, concerning whose approval there is no knowledge.

[*Latin ed. p. 68*]

68 APPENDIX I. And since the matter of Litanies is being discussed, it has come to the attention of the Sacred Congregation that in some churches, especially during the Forty Hours Devotion, booklets are used which either contain the names of particular Saints added, or in which one or two verses are omitted from the prayers; therefore, the Sacred Congregation, adhering to the instruction of Pope Clement X, §. 24. (1), decrees that no other booklets be used, except those printed by the Reverend Apostolic Press, or those that are completely in conformity with them. — His Holiness approved and confirmed this. Sacred Congregation of Sacred Rites, August 4, 1877. — Concerning the edition of books of devotion. Is it permitted to add a version in the vernacular language to the Latin text of the Order of the Mass, and especially the Canon, in books intended for devotion? R. The books and their versions in the vernacular language, of which we are speaking, are entirely subject to the authority of the Bishops, and therefore it is not permissible for the faithful to use these editions unless they bear the express approval of the Bishops. Sacred Congregation of Sacred Rites, September 11, 1847. — Verona. Regarding the recitation of Litanies. Since in many Breviaries and Rituals, prayers for protection against earthquakes, plagues, famines, and wars are included in the Litanies of the Saints, the question is asked whether these prayers must be recited, and in what place should they be added? R. Affirmative, and they should be placed after the verse: "From lightning and tempest." Sacred Congregation of Sacred Rites, August 14, 1858. — Tunk. Occid. Concerning additions to be made in the Litanies of the Saints. In the Litanies of all the Saints, after the verse: "Holy Raphael," if a distinct invocation of one or more Saints is added for any particular devotion, are all the Indulgences granted by the Supreme Pontiffs for reciting the Litanies in this manner lost? If the answer is affirmative, the Episcopal Vicar implores the same Holy See to deign to grant him those same Indulgences again. R. The decrees which forbid any addition to the

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Litanies must be observed. (1) The aforementioned instruction was given on January 21, 1705, for the Exposition of the Blessed Sacrament, during the Forty Hours Devotion.

[*Latin ed. p. 69*]

APPENDIX I. 69 From the Decree of the Sacred Congregation of the Propagation of the Faith, October 6, 1863. — It is approved that an agreement exists between the superiors of the province of Lviv concerning the Latin and Greek rites. In order to resolve grave and prolonged controversies that were taking place in the ecclesiastical province of Lviv, due to differences in discipline, and also because of the mutual relationships between ecclesiastical men of the Latin and Greek rites, which caused, without Christian charity and to the detriment of souls, much disturbance, the superiors of both rites, with good reason, considered it advisable to enter into a convention or agreement on December 23, 1883, which they subsequently took steps to submit for the approval of the Holy See... This Holy See, by this decree, ordered that the aforementioned agreement be approved (Most Holy Father), according to the following terms: "A. Regarding the transition from one rite to another. — a. Everyone is obliged to remain in their native rite, and the arbitrary change of rite, which has been condemned in the past by numerous constitutions and decrees directed both to missionaries and to the faithful of the East, is again and most strictly prohibited, and is declared to be invalid and null if it is carried out in any way. Therefore, no one may change from one rite to another without obtaining permission from the Apostolic See. However, since sometimes urgent necessity may arise, or reasonable causes may suggest a change of rite, in these cases, a change of rite will be permitted, but only with the following method carefully observed. He who desires to change from one rite to another shall present a petition to his own diocesan Ordinary, accurately and faithfully explaining the reasons that suggest the change of rite. The Ordinary shall, in writing, state his opinion on the petition and the reasons: this document shall then be presented to the Ordinary of the other rite to which the change is requested; and this Ordinary shall also state his opinion in writing, and shall transmit everything to the Holy See, which will decide, either by itself or through its delegate, whether the change is to be permitted or not. In urgent cases, which do not allow for delay, the Ordinary of the rite to which the change is requested, after hearing, by the method previously stated, the petitioner who is to be dismissed by the Ordinary of the other rite, shall provisionally admit the change, and under the condition that this change will be confirmed by the Holy See. b. From the date of publication of the initiated Concordat, a period of six months is prescribed in each diocese of both rites, within which it will be permissible for those who arbitrarily changed their rite to return to their own rite, and these same parties shall inform the Bishop of each rite

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of their desire. After the aforementioned period has elapsed, those who have not availed themselves of this opportunity, if they are laymen, shall remain permanently in the rite they illegally assumed, by Apostolic Indult; if, however, they are clerics, they shall individually appeal to the Holy See, so that provision may be made."

[*Latin ed. p. 70*]

70 APPENDIX I. c. From the very day of the publication of the Concordat, if a priest, whether of the Latin or Ruthenian rite, knowingly and willingly admits to his own rite someone who is passing by illegitimately, such an admission shall be null and void; and furthermore, the priest who has committed this grave offense, if he is a religious, shall be subject to the penalties established in the Constitution of Benedict XIV, beginning with *Demandatam coelitus* (i); if, however, he is of the secular clergy, whether a parish priest or a curate, for the first offense he shall be subject to eight days of spiritual exercises, for the second offense to fourteen days, and for the third offense, he shall incur suspension from divine office, and, depending on the gravity of the case, also deprivation of the benefice, if he is a parish priest, after a judicial process; if he is a curate, he shall be punished by being forbidden to obtain a benefice for three years. But if someone, concealing his native rite, were to join the faithful of another rite, and were to seek and obtain spiritual assistance from a priest who arbitrarily assumes the rite of another, such a deceitful act, even if it is revealed only after the passage of many years, shall be null and void; however, the priest who admitted the newcomer to his flock without knowing, shall be declared innocent, and shall be obliged only to return him to his native rite. But if, even with certain knowledge of the newcomer's native rite, he were to continue to provide spiritual assistance to him, already knowingly and willingly attempting to add such a newcomer to his flock, he shall be subject to the penalties mentioned above. (1) In this Constitution (December 24, 1743), in which certain things are established concerning the rites of the Greek Melchites, the following are stated: "Furthermore, (the missionaries) must take care that all those praiseworthy institutions of the Greek Church, derived from the ancient tradition of the Fathers, and confirmed by Apostolic approval, remain in force, and are entrusted to the faithful for their complete observance; nor must they dare to suggest or persuade anything that could lead to their contempt or diminution; much less must they presume, with their own authority, to innovate anything concerning these matters, or even to grant or admit any dispensation concerning them. Otherwise, besides giving a clear account to God, to Us, and to their superiors (whom We particularly charge with the observance of this decree), they must know that, by the force of these Letters, they will incur the loss of the active and passive voice, and the prohibition from holding any office

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in their respective Orders, Institutes, and Congregations."

[*Latin ed. p. 71*]

71 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BERGAMO. REGARDING TESTAMENTS. April 27, 1895. Session 24, chapter 37, concerning Reforms. On April 6, 1888, the Priest Charles Pasinelli, Rector of the Parish Church of the town of Madone in the Diocese of Bergamo, before a public Notary and in the presence of four witnesses, made a will, in which he bequeathed a certain house, which he himself possessed in the same municipality, to the parish benefit, under the condition that such house would serve as a dwelling for the Vice-Parish Priest; however, he ordered that, should it be taken by the State in the future, in which case the purpose of this institution would cease, it should revert to the property of his heirs. By virtue of this act, the house, united to the parish benefit, was presented by the Priest Sanctes Cattaneo, the immediate successor in the parish, to the Government, along with the corresponding taxes; and, since the Vice-Parish Priest refused to use the right to dwell there, because, according to the testator's will, the wife of this brother resided there, having rented the house, he retained the fruits of the lease, as if they were assets of the benefit. However, the Church Fabric claims the fruits of the lease, on the grounds that the intention of the Parish Priest Pasinelli, the testator, was that, when acquiring the house, he should leave it to the Fabric for use as a dwelling for the Vice-Parish Priest. SUMMARY OF THE FACTS.

[*Latin ed. p. 72*]

72. BERGOMEN. Since he was already near death, the aforementioned Parish Priest summoned the administrators of the Fabric (a charitable organization) to call for the Notary to draw up a will. The testamentary witnesses, questioned afterward, state that the Fabric alleges that the testator had previously stated his intention to leave the aforementioned house to the Fabric, for the use of the Vice-Parish Priest as a residence; but, foreseeing the danger of seizure by the Daemani (a local family), he stated that he would leave it to the Vice-Parish Priest. Furthermore, these same sworn witnesses affirm that the Parish Priest always had this intention, and often expressed it, namely, that the house should be used for the needs of the Fabric's Church, so that, through the Parish Priest's generosity, he would not leave it by will, except to avoid the danger of fiscal seizure. Consequently, the testator, the Parish Priest of the Fabric, as a legate, imposed the obligation on the Fabric to pay the Notary's fees, which it duly did. However, the Parish Priest of the Fabric opposed this intention, although he does not deny the facts alleged by the Fabric; he argues as follows. He notes, first, that the Parish Priest's will cannot be ascertained from any source other than the legitimate words of the will itself, since it is well known that a will is the supreme and solemn expression of our will regarding what we wish

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to be done after our death. Indeed, the Parish Priest Pasinelli's testamentary will was expressed in a legitimate and unambiguous manner, leaving no room for doubt. Moreover, the Notary, when questioned in writing about the testator's will, affirmed that it was true. Then, he points out that if the Parish Priest had the intention that the Fabric asserts, he would have been inclined to manifest it to the same witnesses or to others, and to contest it as if to open a discussion; but this did not happen in any way, nor does the Fabric claim that it did. Nevertheless, the Parish Priest expressly admits that the house bequeathed carries the obligation to provide a residence for the Coadjutor; and he must bear the responsibility if he has not yet made use of his right. For, when the Te-

[*Latin ed. p. 73*]

BERGOMEN. A certain man, having left the use of seventy-five *stator* of his dwelling to his brother's widow for a specific part of the house, the coadjutor refused to allow her to live in the same house, according to the will. However, the parish priest notes that this is not legally justified, for only one room was assigned to the woman by the testator, while nine rooms remain freely inhabitable by the vice-parish priest, with their own separate access, which completely separates them from the woman's dwelling.

A Synopsis of the Dispute: It was observed that the issue is not one of fact, but of law; for regarding the facts, the parties do not dispute, but the dispute lies in this: whether the will expressed should prevail, or another will, which the testator did not dare to consign in writing, but which he revealed repeatedly to the very witnesses of the will. Indeed, there are reasons of no small importance that suggest that the latter, not expressed in the will, but sufficiently manifested in another way, should be followed.

Especially if it concerns a will for pious causes. It is, however, well-established in law that in such wills, no civil formalities are required for validity, but two or three witnesses are sufficient, attesting to the pious intention of the deceased, which was manifested to them, to leave something for pious causes. Thus, the Doctors commonly interpret – as reported in Tit. De Testamentis et ultimis volunt. Gury (1-818) – that wills for pious causes are valid, even if lacking any civil formalities, because: 1° it is clear from Canon Law, Decret. lib. 3, tit. 26, c. 2, etc.; 2° because pious causes belong to the Church and are subject to its jurisdiction: moreover, the Church is free and immune from civil power in all that directly belongs to its jurisdiction. Therefore, the Council of Trent decreed: "Bishops, even as delegates of the Holy See, in cases permitted by law, are executors of all pious dispositions, whether in the last will or made during life; sess. 23, c. 5, de Ref." Thus, St. Lig., Less., Rone, and others. The Holy Penitentiary, having been questioned on several occasions, responded that this opinion

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should be followed." Among the more recent canonists, Cl. Sancti is in...

[*Latin ed. p. 74*]

74. BERGOMEN. In his commentariis ad Caput, affirmavit quod dispositio testatoris ad causas pias servanda sit, dummodo "de voluntate testatoris ultima, certitudine morali constiterit, sive per testes sive per scriptum sive alio modo." Nec in hoc casu posset objici, quod causa pia etiam in testamento contineatur per Notarium legitime rogatum, quare privilegiatus adversus aeque privilegiatum suo privilegio uti non deberet; nam satis constare videtur, veram testatoris ultimam voluntatem fuisse relinquendi domum non beneficio parochiali, sed Ecclesiae Fabricae. Quapropter, quia in his causis veritas attenditur, testamentum scriptum praevalebit super testamentum nuncupativum, si hoc verum sit et privilegiatum. Exinde fructus Fabricae iam percepti ex domo locata restituendi sunt, nisi forte iuxta communes iuris regulas saltem in aliqua parte praescripti sint; et praeterea, domus in Fabricae administrationem et possessionem constituenda erit, sub ea tamen testatoris expressa lege serviendo esclusivamente per abitazione del vice-Parroco. Quocirca videtur non esse locum quaestioni, an legatae domus pars locari possit, vel potius an tota Coadiutoris habitationi destinanda sit: expressa enim et clara est testatoris voluntas. Verum ex adverso, Parochi intentioni videtur favorem dare haec potissima ratio. Nimirum non hic agitur quodnam ex duobus testamentis praevalere debeat; nam unum tantum habetur testamentum; alterum omnino desideratur. Esset enim omnia susdeque vertere in materia testamentaria si testandi propositum cum ipso testamento seu suprema voluntate confundatur. Ut alios praetream, concordes in hoc omnes Canonistas, referam verba Cl. Santi loc. cit. subsequentia his iam citatis in aliam partem; nempe: "Dixi de voluntate ultima, nam heredes legitimi non tenerentur ad aliquid praestandum ad causas pias, si constaret solummodo de defuncti proposito seu de consilio vel desiderio condendi testamentum, aut relinquendi aliquid causae piae, sed constare debet de..."

[*Latin ed. p. 75*]

BERGOMEN. 75 "Voluntate absoluta et positiva." Attamen, testificantes in testamento, in casu fidei, manifestant propositum defuncti de legando domus ad Ecclesiae fabricam, sed non minus apertamente testificant de proposito mutato et de rationibus quae ad hoc impulserunt; propterea videntur tantum evincere consilium vel desiderium testatoris, non illam supremam voluntatem expressam, ut post mortem fiat per executores, quod in voluntate testatoris fuerat. Quocirca, testandi solemnis voluntas et actus manifeste desunt. Quamquam vero parochiali beneficio domus potius legata videtur, nondum dubia est voluntas testatoris, nempe per eamdem comparando congruam habitationem Coadiutori, ita fabricam

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sublevando ab huiusmodi onere hactenus ipsi inhaerente. Hoc fatetur fabrica, nec diffidet parochus, imo aperte recognoscit, dolens praeterea quod hoc iure usus non sit Coadiutor, neque fabrica, cuius maxime interat, eumdem inducere ad habitationem sibi relictam suscipiendam. Unde parochus videtur deducere quod, si damnum exinde fabrica persentit, non alii quam sibi imputare deberet. Fortasse maior quaestio est an expensas refectionis ordinarias et onera vectigalium ferre debeat parochus an Coadiutor usuarius. Si sequamur iuri Romanorum, ex I. 19 ff. De usu et habitatione, huiusmodi onera et expensae sunt, pro rata parte communia haeredi et usuario, quando usuarius tantummodo pro parte rei usum habet; secus, omnia fert haec onera usuarius si re integra et solus utatur. Ita etiam Cod. Ital. art. 527, ita conceptum: "Se chi ha l'uso di un fondo ne raccoglie tutti i frutti, o se chi ha il diritto di abitazione occupa tutta la casa, soggiace alle spese di cultura, alle riparazioni ordinarie ed al pagamento dei tributi come usufruttuario." "Se non raccoglie che una parte dei frutti, o non occupa che una parte della casa, contribuisce in proporzione di ciò che gode." Cfr. d'Annibale II, n. 167'. Quamvis autem testator dicat domum debere servire...

[*Latin ed. p. 76*]

76. BERGOMEN. The phrase "divamente per abitazione del vice-Parroco" (literally, "devoutly for the dwelling of the Vice-Parish Priest") is susceptible to a twofold interpretation, and thus requires careful consideration. Either it is understood that the entire house, excluding all other uses, must be dedicated to the dwelling of the Vice-Parish Priest; or, rather, it is understood that the bequeathed house, excluding other uses, is to be permanently used for the dwelling of the Vice-Parish Priest. This second interpretation is more in accordance with the subject matter, because it is too extensive to bequeath the entire house for the dwelling of only one Vice-Parish Priest. Furthermore, in the presence of this doubt regarding the testator's will, positive law prescribes, in the cited article 527 of the Italian Code, that it should be presumed that the bequest was intended as the right of habitation only for that part necessary for use. Roman Law agrees in I. § 4, 5, 6, ff. tit. De usu et habitatione. Therefore, the Most Reverend Fathers will deliberate whether, in granting the right to the Parish Priest, or rather to the Vice-Parish Priest, to receive the fruits of a certain part of the house to be let, the burden of paying taxes and ordinary maintenance expenses should be imposed upon the one to whom the right is granted; or rather, whether the exclusive right of habitation should be granted to the Vice-Parish Priest, and he should bear the burdens of taxes and ordinary maintenance. Having considered both sides of the matter, the following questions have been proposed to resolve the doubt: I. Whether the benefit of the parish, or rather, the Fabric (church fund), was bequeathed in this case. In favor of the Fabric; II. Whether the Parish Priest

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must restore to the Fabric the fruits already received in this case. In favor of the parish benefit; III. Whether the Parish Priest should consider the dwelling of the Vice-Parish Priest in such a way that he completely relieves the Fabric of this burden in this case. IV. Whether a part of the house not necessary for the habitation of the Vice-Parish Priest can be let in this case.

[*Latin ed. p. 77*]

ARTICLE 77. Regarding who should bear the expenses for tithes and ordinary maintenance, in a certain case.

RESOLUTION. The Sacred Congregation, after deliberation on April 27, 1895, decided to respond as follows: To the first question, affirmatively; to the second, negatively. However, it is stipulated that the Fabric [church fund] should be compensated for the expenses incurred by the parish priest from the date of taking possession, from the funds of the parish and the bequeathed house. To the third question, affirmatively. To the first and fifth questions, in accordance with the understanding.

CONCERNING THE SUSPENSION AND REMOVAL FROM THE PARISH of Gratianopolitan Diocese.

January 26, 1895. Session 24. Chapter 4, Regarding reforms.

When the priest Abel administered the parish of the town of Avenières in the Diocese of Gratianopolitan, from the year 1881 to 1886, he took care to restore the parochial church, incurring an expense of 48,124 livres. However, because the parish priest was unable to collect, for this purpose, from various offerings, more than 38,374 livres; he himself provided the remaining sum. This was approved by the Fabric of this parish, which formally acknowledged its obligation to the priest Abel, for the respective sum of 9,749 livres, and declared that it would pay the legal interest on the debt until its complete repayment.

Having approved the administration carried out by the priest Abel, and especially the accounts for the completed restoration, the priest Abel was transferred to the Archpriest's curacy of Saint John, in the town of Bournag; which new parish he accepted, highly recommended by the faithful of the local church of Avenières, as well as by the administrators of the Fabric of that same parish. In his place, on October 3, 1886, the priest Francis Giroud was appointed, who had previously served as a professor and director of a small seminary in Rondeau.

Subsequently, a second summary of the facts.

[*Latin ed. p. 78*]

78. The GRATIANOPOLITAN had previously performed the duties of almsgiver and had also served as administrator of the schools, called "Our Lady's," in the town of Oppido Montfleury. It is said that he was compelled to relinquish these duties due to numerous complaints arising from the exercise of those functions. Upon taking possession of the parish of

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Avenières, he refused to accept the sum of 5000 livres offered by the priest Abel for charitable works, but nevertheless accepted it under the condition that the parish priest Giroud would succeed him in the debt owed by the aforementioned Abel to the "Fabrica," as if he were his agent. Indeed, when the same priest Abel had sent two letters to the parish priest Giroud to collect the fruits of the current year, he received no response. For the parish priest had already begun to inform the Ordinary that he had conceived serious suspicions regarding the legitimacy of his predecessor's debt, openly asserting that the administration of the patrimony of his church was in a very poor condition. He continued to express his doubts, and made them so clear that he wrote to the canon Jacquemin, secretary of the episcopal curia: "Personally, I am entirely convinced that Mr. Abel has not disbursed a single centime of his patrimony for the various works that he has had carried out." As the priest Giroud persisted in disseminating these accusations, he was invited by the Bishop on July 3, 1887, to the curia, in order to provide fitting proof of the suspicions against the priest Abel. But he responded evasively in both instances, first requesting delays to gather evidence, and then declaring that he would never engage in a judicial dispute with the priest Abel, who was too skilled in legal matters: "I will never expose myself to a discussion in the presence of Mr. Abel; he has abilities and boldness that I do not possess." Meanwhile, he presented to the Bishop certain letters signed by the administrators of the "Fabrica," in which he declared that he had signed and approved the accounts of the administration carried out by the parish priest Abel, without having read or examined them. The Bishop immediately manifested to the accused the denounced crime.

[*Latin ed. p. 79*]

In GRATIANOPOLIS, seventy-nine men, with the intention of clearing themselves from such an accusation; and the Bishop himself judged that the priest Abel had clearly done so through the answers he had given. Therefore, he issued a decree, imposing upon the parish priest Giroud that he either, through a written declaration, present reasons conforming to truth and justice, as given by his predecessor, or that he prove the falsity of those same reasons, under penalty of deprivation of the parish, if he should not satisfy either of the two conditions. However, the parish priest again requested a delay in order to prepare the proofs, and he more vehemently pressed the accusations. Then, in order to prevent tergiversation, the Bishop issued another decree on July 21, 1887, inviting the parish priest to sign, under penalty of removal from the parish, a declaration of the following tenor: "I, the undersigned parish priest of Avenières, regret having raised doubts about the regularity of the accounts relating to the restoration of the church of this parish, and I hereby declare that I purely and simply retract the accusation that I rashly made in this regard." The parish priest signed, but shortly thereafter he attempted to retract it, on August 24, 1887,

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requesting from the court the revocation of the declaration, stating therein: "You asked me for a retraction. I signed it at the urging of the archpriest and to put an end to the scandal that Mr. Abel was spreading throughout the diocese. I made it against my conviction, because I know that Mr. Abel's accounts are not accurate." The Bishop, in order to convince the parish priest of his error, invited him to answer before a certain assembly of men chosen by himself, namely, composed of the Secretary of the general curia and two parish priests. The assembly was held, but the matter could not be resolved. In the meantime, the parish priest, insisting on his accusations, wrote to the Bishop: "I have said and proven that the accounts of the Reverend Abel are contradictory: please prove the contrary to me." Then, in order that the controversy might finally end, the Bishop ordered the parish priest Giroud, on December 19, 1888, that

[*Latin ed. p. 80*]

80. The matter concerning GRATIANOPOLIS was to be settled within fifteen days, and the obligation undertaken by the *Fabrica* towards the priest Abel was to be demanded; should this time pass without resolution, the priest was to be immediately removed from the parish. In December, the parish priest compelled the administrators of the *Fabrica* to attend a meeting, at which a certain archpriest, delegated by the Bishop and the priest Abel, was present to propose a settlement for the definitive resolution of the matter. The administrators, rejecting any agreement, decreed that the priest Abel must present proof of the legitimacy of the accounts submitted, from the very beginning. The priest Abel refused to do this, and at another meeting of the *Fabrica* administrators, attended by the lawyer Blanc, whom he had chosen for this purpose, he defended the accounts presented and declared their validity. However, during this defense, the parish priest Giroud, present at the meeting, made more insistent accusations against the priest Abel. This reached the ears of the Bishop, who immediately imposed upon the parish priest the obligation to retract such injurious statements; and he also ordered that the *Fabrica* fulfill its obligation, under penalty of the imminent deprivation of the parish. However, the parish priest, overcome by anger, wrote insolent and highly injurious letters to the Bishop, as he himself laments, in order to refute the published decree. The Bishop responded, expressly and fully approving the administration carried out by the priest Abel, and, decreeing various threatened penalties, ordered that the *Fabrica* pay the due sum as soon as possible. The parish priest Giroud, at first, seemed sincerely willing to obey the Bishop's orders, but shortly thereafter, in June 1889, he proclaimed in a letter: "Mr. Abel has no claim against the *Fabrica*. The alleged approvals of his accounts are null. It is demonstrated that Mr. Abel has deceived either the members of the *Fabrica* or the administration, etc." Given the situation, the Bishop deemed it necessary to resort to a formal judgment,

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and therefore he told the priest Abel to summon the parish priest Giroud to the tribunal of the Curia. Hence, the Curial prosecutor Debut, at the request of the priest Abel, introduced an accusation, requesting that the parish priest Giroud be removed from the parish for the crime of defamation. The same official, Debut, was delegated to conduct the proceedings; therefore, to the parish...

[*Latin ed. p. 81*]

In Gratianopolis, 81 loci Avenières presented itself, so that the instrument and supporting facts might be subjected to examination. However, the priest Abel was not questioned. The acts of the inquiry were published on October 25, 1889, and these were favorable to the parish priest Giroud. Indeed, it is stated in the conclusion: "I conclude by saying that Mr. Giroud, having had in his hands only those documents on which my report is based, is justified from the accusations brought against him by Mr. Abel. I therefore pray that the Officiality pronounce in his favor an order of dismissal and that the accounts of Mr. Abel be subjected to a new examination." Subsequently, for further examination, according to the wish of the promoter, the Vicar General himself proceeded, also employing the vice-official Faure. The priests Giroud and Abel were summoned to appear. After both were heard separately, and after the documents of both were reviewed, a judgment was rendered absolving the priest Abel, and condemning the parish priest Giroud as a calumniator; and he was proposed to be subjected to public reprobation, as is stated in the same judgment, approved by the Bishop on November 25, 1889, and demanded for execution. The priest Giroud protested against this judgment, especially because, before complying with the summons, and after having requested permission from the Court to bring a lawyer with him at the hearing, he had been dismissed; this, he maintained, was contrary to law, because he was not called as an accused, but only to confirm the conclusions of the promoter's report, Debut. Therefore, upon learning of the judgment, on December 4, 1889, the parish priest Giroud went to the Bishop with the lawyer Grolée. After a discussion on this contentious matter, it was not permissible to reach a conclusion, but because the parish priest Giroud seemed to have great confidence in the lawyer Grolée, the Bishop, hoping to persuade him because of the obviousness of the matter, proposed the following question in writing: "Has Mr. Giroud made certain accusations against Mr. Abel?" The lawyer Grolée undertook to resolve the question, as if he had been appointed as an arbitrator, and under this title presented a report, *Acta, Vol. XXVIII, p. OOOXXVI. 6*.

[*Latin ed. p. 82*]

82. The Iratiopolitan affair continued. In the meantime, the priest Abel, having become more certain of the situation, wrote to the Bishop on Decem-

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ber 11th, rejecting the arbitration of the lawyer Grolée, since the judgment of November 25th could not be examined except by the Archbishop or the Pope. Then, on January 11th, 1890, the same priest Abel was appointed honorary canon of the Cathedral; therefore, the lawyer Grolée, perceiving that the Bishop's deliberation would publicly postpone or impede his arbitral judgment, sent the Bishop very insulting letters, which he seems to have endeavored to publish through newspapers and to spread as widely as possible among the people. As the scandal grew daily, the Bishop considered that the ministry of the parish priest Giroud was no longer useful in the town of Avenières, and by decree of February 12th, 1890, he transferred him to the parochial church of Chanas, for a time, of a lower rank. However, this priest refused to obey the decree, arguing that "since the religious and civil tribunals were seized of the question that motivated his transfer, he could not leave his post until they had pronounced their judgment." Indeed, on February 20th, 1890, the priest Giroud appealed to the Supreme Pontiff against the judgment of November 25th, 1889, both because the procedural forms of the judgment had not been observed, and because the constitution of a defender had been denied. At the same time, the administration of the factory had brought the matter before the civil court, allegedly at the instigation of the parish priest Giroud, urging the priest Abel to declare the obligation undertaken towards him to be null and void, and to compel him to return the sums of money collected for pious purposes and not delivered to the factory. However, since the parish priest Giroud persisted in refusing to obey the Bishop's orders, by a decree of the Vicar General of February 24th, 1890, he was ordered to take charge of the parish of Chanas, under penalty of suspension on the day following this decree. Furthermore, the Vicar General wrote to the archpriest Bouvallet, the immediate superior of the priest Giroud, instructing him to confer with him regarding the parish of Avenières, and there, if he still found him reluctant, to take two.

[*Latin ed. p. 83*]

In Gratianopolitan territory, a limited space was granted for deliberation, which, having passed by fruitlessly, it was declared that a personal and general interdict had been incurred, whereby he could no longer administer the parish of Chañas. The execution of the decree took place on February 27, 1890. Nevertheless, because it was not possible to remove the pastor, at the request of the Bishop, and also by decree of the political authority, namely the Prefecture, the priest Giroud presented himself to his superiors in the town of Trept. Meanwhile, in defiance of the decree of the interdict, he presented another appeal to the Holy See, requesting the complete restoration of his position. At the urging of the Bishop and the priest Abel, the Metropolitan Curia of Lugdunensis, having examined the matter, and considering the reasons for the completed administration, based on the opinion of a learned and eloquent man, the assessor and

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secretary of the Tribunal of Commerce of Lugdunensis, declared that the administration's management was entirely commendable. Even the Sacred Congregation, having considered the controversy, rather than focusing on whether the accusations disseminated by the priest Giroud against his confrere were legitimate, issued this response on May 2, 1891, to the Bishop of Gratianopolitan: "Having reviewed the matters presented concerning the controversy initiated by Father Giroud, after careful consideration, the Most Reverend Fathers have written: Since the sentence of the Episcopal Curia of April 23, 1889, confirmed by the Most Reverend Metropolitan on October 12, 1890, has been rendered, the petitioner must acquiesce. However, Father Giroud should be seriously warned to consider his conscience, to restore the damaged reputation of his confrere, to seek forgiveness from his Bishop, and to abstain from such actions in the future." In response to this rescript, the priest Giroud stated that it was not his intention in presenting the appeal to the Holy See to expose the merits of the administration of the priest Abel, but rather to challenge the Episcopal decrees of November 25, 1889, and February 27, 1890, which imposed unjust penalties. Truly, the matter concerning the reasons for the completed restoration by the priest Abel seems to be settled. For the priest Ron stang, his successor in the parish of Avenières, accepted the established facts.

[*Latin ed. p. 84*]

84t. In Gratianopolis, certae gestiones administrativae praecedentis, sub nomine Abel, sunt in actum deductae. Cum hoc, pactum initum est de cessione obligationum, et promissum est de consensu Episcopi, ut ipse, Abel, sacerdos, creditum assumeret contra Fabricam, qui ipse erat cessionarius huius actionis. Denique, ad compescendum omne scandalum, a parocho Ronstang et ab administratoribus Fabricae, haec transactionis syngrapha subsignata est die 18 Martii 1891: "Comptes qui constituerent Fabricam creditoris sunt valde simplices. Illi habebant in creditum domini abbatis Abel summam 9749 francorum, quae exacta recognitebat; deinde, in debitum, erant scriptae diversae summae, quae vel ab ipso domino Abel, vel a domino Roustang, pro compendio ecclesiae vel Fabricae, receptae erant; ex quo, computatis, Fabricam restabat creditor 750 francorum, quos dominus Roustang se obligabat solvendos, et quos in effectum solvit." Sed accidit ut, transactioni praeponantur nonnullae phrases, approbantes animadversiones a parocho Giroud iam factas. Quare, sacerdos Abel protestatus est, dicens se transactionem non initasse cum Fabrica, cum hanc stipulatus sit crediti cessionarius parochus Roustang, proprio nomine et arbitrio. Cum administratores Fabricae huiusmodi propositiones ex actis expellere nollerent, ipse Episcopus Gratianopolitanus sollicitavit politicam potestatem ad easdem expellendas. Interea, idem Episcopus, etiam ad instantiam quorumdam sacerdotum, contulit, sed precario, presbytero Giroud paroeciam loci Vennissieuœ, cuius possessionem suscepit. Sub

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id praetextu, transmissum est S. C. C. Rescriptum, cui obtemperare parochus promisit, sed sub conditione, ut idem Rescriptum in publicum non divulgaretur. Hoc admittere non posse Episcopus arbitratus est, qui contra eiusdem Rescripti exemplaria statim ad clerum universum dedit. Quod aegre tulit parochus Giroud, minacesque litteras Episcopo scripsit, quare etiam paroecia loci Vennissieux privatus et a divinis suspensus, ad suos iterum se recepit, in oppido Trept, ubi adhuc commoratur.

[*Latin ed. p. 85*]

GRATIANOPOLITANA 85. Disputatio Synoptica. Episcopus defendit modum suum agendi, referens historiam factorum ab initio, quae iam relata sunt in specie facti, et instat vehementer ad S. C. C. ut definat per auctoritatem suam hanc quaestionem, quae causavit perturbationes et scandala in Dioecesi, et quae perseverabit donec finem accipiat per sententiam Emorum Iudicum.

DEFENS IO PAROCHI. Ex altera parte, patronus a parocho Giroud constitutus, postquam seriem factorum narravit, observat quod quaestio sit de iustitia poenarum, quae duobus decretis suo clienti infliguntur. Orator notat quod primum decretum parocho Giroud infligit vituperationem, quasi calumniam reo in fratrem, et hoc vulgatur per transmissionem archipresbytero et superioribus ecclesiarum, sub praetextu quod, cum scandalum a Giroud accusationibus et allegationibus publice allatum fuerit, ita publica reparatio fieri debeat. Sed, observat patronus, huiusmodi poenas publicae reprobationis et infamiae non solum extra ius sunt, sed etiam ecclesiasticarum poenarum rationi contrariae sunt, cum scandalum adiiciunt scandalo et auctoritatem rectoris ecclesiae in fideles evertunt. Sed cum de poena certo agatur, poenale iudicium omnino praecedere debuisset.

Videtur ex expositis patet quod nullam iudicii formam nec speciem quidem adfuit. Primo loco, defuit citatio rei. Accusatus enim, invitatus ut ad dioecesanum tribunal veniret, nulla citationis iuridica forma servata est, sed per epistolam, cui obiectum vocationis non designatur. Vocatur ad hoc tantum, ut conclusiones sibi faventes, relationis procuratoris curiae, sustineat. Parochus vocationi paruit, et seque sistit, ne suspicatus quidem de crimine agi. Incipit ergo defectus tum formae tum substantiae ab ipso iudicii limine, cum nulla citatio fuerit, nec ipsa rei praesentia eius defectum sanat, cum ad aliud quam ad poenale iudicium vocatus sit. Can. 2 et 4, Cap. 3, qu. 9 Clem. 2 de sent. et reiudic.

Vantius de nullitate ex defectu.

DEFENS IO EPISCOPI. F.

[*Latin ed. p. 86*]

86. The GRATIANOPOLITANA citation, no. 2 and following. Covarru-

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vias, *ad Cap. Alma mater*, part 1, § 9, no. 5. But neither was a tribunal, properly speaking, held. The *Promotor*, the author of the report, was absent, and there was no scribe to record the proceedings and reduce them to a document. The advocate notes a more serious defect, because when the accused requested to bring with him an advocate, who would legally demonstrate that the reasons given were flawed and would confirm the justice of the report presented to the court, the request of the parish priest was rejected, this being done most firmly on the grounds that he was not accused of any crime. Therefore, neither was there an accused, nor a defense. Giroud was subjected to the most severe penalty. All of this condemns and violates both human and divine laws, and certainly does not constitute justice, but rather an injustice: Chapter 19 concerning sentences and judicial matters; Chapter 1, sequence. so that it may not be considered a legal dispute; Chapter concerning accusations. Furthermore, according to the patron, no excuse can be offered if in that sentence it is declared that Giroud has committed a public offense and, therefore, a public reparation must be made by him. For, as the esteemed Father Pallottini writes in his work entitled *Pugna Iuris Pontificii statuentis suspensionis extraiudicialiter etc.*, "Therefore, for public crimes, when a judicial order has been established by law, these cannot be coerced by extraordinary or economic means. If, when an ordinary remedy exists, namely the judicial order, anyone were to resort to an extraordinary measure at will, then both divine, natural, ecclesiastical, and civil law would be violated; for even in summary proceedings, a citation must precede. This applies even if the penalty has been prescribed by law outside of the ministry or declaration of a judge, and under certain conditions established by the same law, since a citation is always necessary, so that the judge may declare the accused to be in default, assigning a term for presenting his case and for clearing up that default, as introduced by canonical equity. This canonical equity, having become practice in all tribunals, has been preserved and maintained with utmost care by the Catholic Church to the present day." And a little later, he continues as follows: "(there) whenever bishops, extrajudicially or based on informed conscience, for offenses..."

[*Latin ed. p. 87*]

"The Sacred Congregation of the Council of Trent has declared null and void those penalties or censures imposed publicly, without observing the proper legal form." The Advocate noted that the substantial defect in the first decree also affects the second decree. On February 27, 1890, the parish priest, who is subject to a personal censure of interdict, was notified. The decree was announced by the archpriest of Morestel. And on the same day (February 24), the bishop testified that he had transferred his authority to the Vicar General with a special mandate, using these words: "See to it that what was done by Monsignor Mussel through Monsignor the Archpriest is

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done legitimately." The patron then quoted the precise words of the decree: "The Lord Bishop has imposed upon him a universal interdict, and the parish of Ghanas is taken away from him." To this, the archpriest added an oral explanation: "He is no longer permitted to celebrate Mass, nor to hear confessions, nor to receive the Sacraments of the Eucharist and Penance, without a note of irregularity." From this, it is clear that the priest, Giroud, had already been expelled from the church of Avenières. In addition, the Advocate pointed out that the defects of the second decree are more serious. There was no form of judgment, no summons to court, no opportunity to contest the accusations, no form of sentence, no warning, and no opportunity for evidence or defense, all of which were neglected. With these observations regarding the form of the decrees, the Advocate argues that there are no less serious defects in substance. For the parish priest, the most serious charge was that he had refused to obey the bishop's authority, by acknowledging and confirming the debt of the parish to Monsignor Abel, according to the norms and methods of the accounts submitted, without subjecting those accounts to any examination. This is the first point; secondly, he refused to accept a transfer to a subsidiary parish of a much lower rank. This second point appears to be the cause of the second decree, which, as is evident, originates from the first and is closely connected to it.

[*Latin ed. p. 88*]

88 GRATIANOPOLI! A certain Bishop, having signed the aforementioned second decree on the same day, imputes several sins to the parish priest: namely, that he failed in discipline when ordered to provide justifications for Abel, and that he refused to do so. There, "whether the administration is right or wrong in your regard, you, certainly, are wrong not to obey." The patron observes that this kind of obedience, which was required for this purpose, seems remarkable, since the parish was burdened without any demonstration that it was due, and indeed, subsequent events did not strongly indicate this. Therefore, the administrator was ordered, despite his conscience, to fulfill his duty, after having disregarded the most severe prohibition of Canon Law in *Extravagantes*, concerning ecclesiastical property, whereby any condition is condemned from which the property of the Church may suffer detriment (Innocent. Giron. Paratiti, in Decretal. I. 3, tit. 13, § 3). Moreover, the patron notes, if the parish priest had believed that this was not sufficiently correct, if, having been caught in an error, he had provided precise justifications for unjust and improper actions, this would not be sufficient to establish the crime of calumny against him. Proof of bad faith or deceit is so necessary for condemnation that without it, no crime of calumny can be conceived: De Luca, De iudiciis, disc. 31, n. 21 et seqq. Indeed, according to the speaker, what followed, unless it entirely demonstrates that the parish priest justly and deservedly obeyed the order

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of the Bishop, at least clearly demonstrates his good faith. For on March 18, 1891, a transaction was initiated between Abel and the advisors of the Factory, in which Abel sent a message regarding the outstanding debt, and paid 750 francs to the Factory. The author of this transaction was the new parish priest of Avenières, named Ronstang. Therefore, the patron argues, what contradicts the good faith of his client are the report of the promoter of the court, the opinion of the most distinguished jurist, Grolée, and finally, the transaction concluded between the administrators of the Factory and Abel. This alone would be sufficient, he says, since no one is ignorant that such a doubtful matter can be settled in this way, as commonly taught by jurists in I. 1, dig. de transad, De Luca De beneficiis disc. 32, n. 11. The Bishop enumerates the causes of punishment in a letter to the parish priest on February 24, 1890, and includes disrespectful words.

[*Latin ed. p. 89*]

GRATIANOPOLITANA 89 remembers having received letters from him on various occasions. However, Giroud, lamenting the loss of these letters, implored the Bishop, humbly and repeatedly, for forgiveness, and these letters do not constitute such a crime as to warrant a reprimand and the deprivation of his parish. In this matter, he cites the aforementioned jurist, as he writes in his work, page 151: "The constant and perpetual practice of the Holy Congregation of the Council of Trent has been to disapprove and reject the deprivations of pastors, unless three things concur cumulatively: namely, a grave cause, the conclusion of the same, and the prescribed canonical form. A grave cause can arise in two ways: either through crimes for which the benefice itself becomes vacant by law, when the punishment of the law is inflicted by the ministry of justice, or when, by a sentence of a judge, a penalty of deprivation is imposed solely for crimes and excesses, without the law itself imposing this penalty by its own force, but only through the sentence of the judge. This also seems to be the case when it is a question of the deprivation of a removable parish. For this power to remove is not considered to have been granted so that it can be carried out without a grave cause, especially in the case of parishes that require a perpetual and inherent office. Indeed, the gravity of the cause is considered necessary by canonical equity, which does not allow the most severe punishment to be inflicted without a corresponding fault." Because the Bishop, among other things, reprimanded Giroud for his disobedience to the decree of transfer to the parish of the place of Chañas, the patron observes, justly, that he refused to approve the administration of his predecessor, nor is it lawful or just for the Bishop to punish him repeatedly and in various ways for the same fault, especially while an appeal is pending. For, as John Devoti writes in *Institutiones Canonicae*, volume III, title XV: "A legitimately interposed appeal suspends the jurisdiction of the lower judge, and refers the case to the higher judge to whom the appeal has been made.

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Therefore, in the meantime, while the appeal is pending, the lower judge cannot take any further action in the case, and if he does take any action, everything he has done is restored to its previous state by the higher judge. *I. un. Dig. Nihil innov.*, interpretation, chapter 7, On appeals, section 6."

[*Latin ed. p. 90*]

90. The petitioner further observes that even the most serious offenses do not necessarily entail the severest penalty of deprivation from the parish, as the Most Holy Congregation has repeatedly judged, as can be gathered from the documents of Cracow, *Parochialis*, February 10, 1770, § several; *Senen. Dispensationis*, February 3, 1786; *Acherontina Privationis Paroeciae*, March 31, 1885; *Messanen*, March 18, 1854, and elsewhere. Furthermore, the advocate notes that the Bishop's decree does not provide grounds for removing the parish priest. For it cannot effect that the Bishop, at his own discretion, may dismiss the parish priest and subject him to disgrace and destitution. He recalls what is stated on this matter in the *Collection of Decisions* of this Holy Congregation, under the heading *Parochus*, § 10, no. 45. – There – « Moreover, even if the case concerns a simple chaplain or a removable *vicarius ad nutum*, nevertheless he can only be removed from office, not at the discretion of the Ordinary, but for a just and probable cause, as Antonelli's *Iuris Canonici* book 1, part 3, chapter 32, and Berardi in the appendix on impropriate benefices to the universal Church, state, and as the Holy Congregation has often defined, as in *Nullius F arfen*, concerning chaplaincies, July 16 and August 16, 1791; for, after considering the opinion of the doctors who maintain the contrary, this opinion is deemed more equitable, which is the opinion that the Holy Congregation has always followed: in *Romana Suspens, onerum*, March 28, 1801, § *Quatenus*; and in *Messanen*, March 18, 1854, § *Verum*, no. 46. » The Bishop's decrees appear all the more worthy of approval to the petitioner, because they concern a man whom, in the presence of the petitioner himself and the advocate Grolée, the Bishop himself praised most highly with these words: « Mgr. Giroud is one of my best priests. » Regarding the second petition for compensation; the advocate recalls the most wise provision of canon law which states that even a judge must not inflict spoliation if he unjustly deprives someone of possession, chapter 7, *De restii, spoliat*, chapter 22. Therefore, the person who has been spoliated must first be restored, and this is the primary remedy for the injury suffered. Whatever has been taken from him, or is forbidden to him, must be restored.

[*Latin ed. p. 91*]

GRATIANOPOLITANA 91, n. 51, concerning appeals; n. 11, concerning clothing and dispossession, according to the constant and perpetual jurisprudence of the Holy Sacred Council. With these matters brought forth,

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the following questions were to be clarified: I. Do the decrees of the Gratianopolitan Tribunal of November 25, 1889, and of February 27, 1890, apply in this case? And, if not, II. Is there a basis for the restitution of damages in this case? RESOLUTION. After deliberation, the Holy Sacred Council decided to respond as follows: Regarding the decree of November 25, 1889, affirmatively; regarding the decree of February 27, 1890, affirmatively concerning the translation [of the parish] and the deprivation [of the benefice]; regarding the general interdict, negatively; and, provided that the priest Giroud demonstrates true repentance, he should be provided with suitable support. CALTAGIRONE. CONCERNING THE FOUNDATION OF CANONICAL POSITIONS. February 23, 1895, Council of Trent, Session 25, chapter 5. SUMMARY OF THE FACTS. The canonical positions of the Cathedral Church of Caltagirone, reduced from five dignities and sixteen canonical positions to the aforementioned five dignities and seven canonical positions due to the laws of the Kingdom of Italy which undermine ecclesiastical property, are as follows. It should be noted that the Municipality presents candidates for the five dignities, by virtue of the right of patronage; this right, concerning the remaining seven canonical positions, is exercised alternately by the Bishop and the Municipality. In order that the Bishop might provide for the service of the choir and also for the benefit of the Seminary, in the year 1891, he decided to establish four major canonical positions and two minor canonical positions, or mansionariates. However, it was no small matter to determine the endowments of these positions.

[*Latin ed. p. 92*]

92 CALATAYERONEN. Concerning the conditions of the canons, when the Bishop and the Chapter were not in agreement: especially because the conditions prescribed by the Chapter in the founding documents, under numbers 9 and 10, were displeasing to the Bishop. For in these [documents], the right of option and concurrence for the four new canons to provide theological and penitential instruction is denied. There are sixteen articles by which the act of foundation is established, and which are invoked by the Bishop and the canons, in order to discuss the validity and extent of this act in this controversy. Although there is no document in the records that proves that the Bishop approved and confirmed these articles, nevertheless, he seems to have approved them, since he did not contradict them; indeed, he chose three canons for the title of the greater canonry which he himself established. The canons of the foundation unanimously approved these articles, except for one. However, because the Bishop was not satisfied, as mentioned above, with what was decided in articles 9 and 10 of the act of foundation, he presented a suppliant petition to the Sacred Congregation of the Council, in which he implied that the canonry which he had endowed was not different from, nor

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suppressed by, the Civil Government, and that therefore the rights in it should be fully restored. With these premises, he requested: I, Whether these four canons should enjoy the right of option, as the other sixteen enjoyed before the suppression; II, Whether they should have an active and passive voice in all acts of the Chapter. The Sacred Congregation of the Council responded to both questions on February 23, 1893: As stated, to both questions, affirmatively. The Bishop immediately informed the Chapter that he had received from the Sacred Congregation of the Council an authentic response, in which the rights of option and of active and passive voice were recognized for the canons endowed by him. But the Chapter, justly objecting, maintained that the response of the Sacred Congregation of the Council was conditional or relative, "as stated"; but that these conditions were entirely foreign to the truth, because, in this case, the canonry was not from an old foundation, as if it were only recently endowed, but were entirely new foundations, as is clear from the 16 articles of the act of erection. To this objection, the Bishop responded by approving these [articles].

[*Latin ed. p. 93*]

CALATAYERONEN. Articulus 93 statuit quod haec clausula est approbata sub conditione, quod articuli 9 et 10, in quibus agitur de iure optionis et vocis activae et passivae, sint redditi magis conformibus iuri communi, dum interim servabuntur sine praeiudicio. Verum, haec clausula Capitulo ignota videtur fuisse usque ad initium huius controversiae, quam proinde nullum parere effectum iuridicum perfractum Capitulum asseverat. Exinde nullus amplius ad concordiam aditus patuit Episcopo inter et Capitulum, cum in dies augerentur rixae et discordiarum fomenta. Qua in tristissima lucta, genuina factorum enarratio iubet fateri in pacem magis propensum animum ostendisse Capitulum quam ipsum Episcopum, qui non semel sua ipsa potestate in Canonicos minus pacate usus videtur.

Disceptatio Synoptica.

DEFENSIO EPISCOPI.

Episcopus suas exarans allegationes, in primis non amplius videtur negare Canonicatus a se dotatos esse revera novam fundationem; nam in ipsa dubitandi formula in calce exscribenda loquitur « de novis Canonicatibus a se ipso fundatis. » Quare potius videtur deducere iura novorum Canonicorum ex ipsa Canonicatuum natura, nec non ex iuribus sibi competentibus, qua Fundatori. Re quidem vera ait, se passum esse, Canonicos proposuisse et approbasse art. 9 et 10, eo quod inniteretur duplici iuri, qua Episcopus et qua fundator, modificandi in limine fundationis conditiones, quae minus iustitiae conformes viderentur, easque redigendi ad tramites iuris. Cum Capitulum, prosequitur, oppositionem faceret, res delata fuit S. C. Congre-

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gationis iudicio. Dein examinans naturam novorum Canonicatuum, recolit unam Veliternam die 20 Dec. 1851 apud S. C. C. definitam, unde desumitur, inter alia, canonicos novae erectionis voce activa et passiva gaudere, exceptis iis quae respiciunt interesse et iura particularia veterum canonicorum.

[*Latin ed. p. 94*]

94. CALATAYERONEN. Regarding precedence, according to the rules of common law, the rights pertaining to these canonically established foundations must be attributed to them. Scarfantonium, in *lib. 1, tit. 14, animad. 51*, discusses this matter as follows: "A difficulty arises as to whether a chapter can claim that a canon, newly established, is not admitted to the full rights of the canonry; but rather, is admitted only as an honorary canon, for the sole purpose of serving the choir without active or passive voice in the chapter, and without precedence in divine offices and other chapter acts, according to the order of seniority, being installed after the other canons upon their reception." To this question, the author here responds: "That they are to be admitted regularly to these privileges without any difference whatsoever from the ancient canons, has been repeatedly decided by the Sacred Congregation of Councils and by the Sacred Congregation of Rites, as can be seen in Pignatelli, *consul. 48, n. 9 sq.*, Vol. 6. The reason is that these canons are truly and properly such, and they constitute one body, representing the Church; they should not be distinguished from other members of that body, but, in some way, upon their reception into the canons, they should participate in all the rights and privileges of the canons, just like the ancient ones." Finally, the Bishop, through the granting of these rights, has endeavored to demonstrate that no prejudice is done to either the ancient canons or to the patrons, by every means possible. DEFENSE OF THE CHAPTER. On the contrary, the Chapter maintains that these canonries are so newly established that their rights cannot be restored except by the founding documents, approved by the Chapter on October 27, 1891. Therefore, the Bishop's intention cannot be admitted, namely, that these canonries, founded by him, should succeed the ancient ones, suppressed by the government, so that the rights of the former are derived entirely to the new canons. Hence, they recall the doctrine of law, namely, that founders can, at the very foundation, add qualities, laws, and conditions even contrary to common law; but once these have been added at the foundation, the founder can no longer change them. Fagnan, *in cap. Conquerent.-De Praeb.-n. 24*, and Barbosa, *Iuris Eccl. lib. 3, cap. 4*. Thus, the Council of Trent.

[*Latin ed. p. 95*]

CALATAYERONEN. 95 in Session 25, chapter 5 - Concerning the reference to strengthening the founders' intentions and protecting them, it is stated: "Otherwise, the provision made shall be considered surreptitious."

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Then, they point out that no business should be undertaken with an exception opposed by the Bishop after a controversy has arisen, indeed, that the Bishop has approved, with certain reservations, articles 9 and 10 of the founding act. For they note that, with the consent of the Chapter, one Canon was chosen from the Chapter to draft the laws of the foundation, which were drawn up with the full knowledge, permission, and free examination of each article by the Bishop. However, the reservation made by the Bishop to the Chapter was renounced by letter of May 19, 1893, namely, after almost twenty months from the date of approval, and after three Canons had already received possession of their respective canonries from the aforementioned statutes. Indeed, the Chapter notes, according to the unanimous opinion of the Doctors, that the founder himself cannot change the laws and conditions established by him in the foundation, with the consent of the Bishop, if such a change would be to the detriment of the Church or of a third party. See S. Rotae, part 7, more recent, decision 37, n. 1 seq. Through numerous observations, the Canons attempt to demonstrate that there is a prejudice to a third party, who are the seven prebendary and titular Canons within the number; who are entitled, passively, to provide theological and penitential services. Furthermore, they say that there is a prejudice to the Church and the cathedral Chapter due to issues that could arise with a lay patron or with the Municipality; and with the Economy, which seeks to acquire new prebends, because the Canons are those who do not have the right to enforce. Moreover, they say that other difficulties could arise on the occasion when one of the new Canons resigns as chapter vicarius, who needs the right to enforce, so that his acts are valid before the civil government. Indeed, disputes and conflicts could immediately arise, should one of the prebendary Canons die, whose presentation to the Municipality is required. Recent history still shows how anger and resentment have flared up.

[*Latin ed. p. 96*]

96. CATALAYERONEN. Concerning a similar case, from the year 1881 to the year 1885. Furthermore, it must be noted the decree of Pope Leo XIII of April 10, 1885, by which he commanded and decreed that the aforementioned Apostolic Administrator should admit the priest Michael Gulino, nominated from the same municipality, into the canonical possession of the TWELFTH canonry, for the purpose that the priest Marius de Mineo should, for the present, be considered as a canon, beyond the aforementioned number of twelve. Having related these matters here and there, the purpose was to resolve the doubt as to whether the canons of a new foundation possess the active and passive vote, preceding the canons of the old foundation, after they have been co-opted into the Chapter, and also the right to participate in the provision of theological and penitential offices, in such a case. RESOLUTION. The Sacred Congregation, after deliberation on

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February 23, 1895, decided to respond: Negatively. FROM WHICH, THE FOLLOWING MAY BE GATHERED: I. The founder of benefices can, at the very beginning of the foundation, add qualities, laws, and conditions, even those contrary to common law; however, he cannot change those qualities once they have been added. II. The exception raised by the Ordinary, namely, that the articles 9 and 10 of the founding act were approved with a certain reservation, has no value, because it became known to the Chapter a long time afterward, when, namely, three canons had already received possession of their respective canonries according to said articles. III. Perhaps, the Chapter, even at the very beginning of the foundation, should not have deviated from the disposition of articles 9 and 10, anticipating the disputes and quarrels that could arise, so that these two articles would be suppressed.

[*Latin ed. p. 97*]

97 WŁOCŁAWEK. NULLITY OF MARRIAGE. On February 23, 1895. SUMMARY OF THE CASE. In Warsaw, in the church of the Patronage of Saint Joseph, on May 25, of the year 1875, Bolesław and Philippina were married; the latter being a girl of noble birth and of the age of 21 years. However, events did not proceed well. Philippina states that, before the marriage, she was violated and made pregnant by Ignatius, Bolesław's father. She herself asserts: "I was unaware that I was contracting an affinity with my spouse. Before the marriage, I confessed this sin, adding nothing of what I had done, because at that time I considered my father-in-law to be a stranger. The confessor did not entirely advise me of the impediment; I told no one about the illicit act with my father-in-law." The spouses immediately began to live a separate life, and Philippina gave birth to a son on January 30, 1876, which was eight months after the beginning of their marriage. After a decade had passed of this common life, which, as it is asserted, was not always harmonious, the husband was forced to move to other places because of a crime he had committed; the wife, for the first time, as she herself says, was taught in general confession that her marriage to Bolesław was invalid due to the impediment of affinity. In the year 1886, she requested a trial before the court of Włocławek regarding the nullity of her marriage to Bolesław. The Consistory received the petition and, with the greatest diligence, began a judicial investigation. Bolesław, whose whereabouts were unknown, was summoned to court by publication in the newspapers. However, after the appointed time had passed in vain, the Consistory first examined the plaintiff, then seven witnesses, and finally three who were involved in the case, whom the plaintiff herself indicated, regarding the custom of *vadai*. Having heard these testimonies, the judge considered himself able to reach a judgment, which he indeed

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rendered on December 15, 1887; Records, Volume XXVIII, page CCCXXVI.

[*Latin ed. p. 98*]

98. VLADISLAV AVIEN. And that marriage between Philippina and Boleslaus was declared null and void, due to the impediment of affinity of which we spoke above. The cause was brought before the metropolitan tribunal of Varsaviae, in which a judgment contrary to the first was rendered. Philippina did not acquiesce, but on November 2, 1889, she appealed to the Most Blessed Father. Before the doubt could be presented before the Sacred Congregation, the advocate of the woman requested that three new witnesses be examined by the court of Varsaviae. In response to these requests, a decree was issued by the Most Holy See on July 7, 1892: "According to the wish of the defender of the marriage, that is to say, it should be written to the Archbishop, who, after a diligent and secret investigation into the honesty of the witnesses, having ascertained that they are worthy of belief and removed from all suspicion of collusion, shall, with due observance of all due processes, reject them judicially, and also having the power to delegate the carrying out of this, shall transmit the proceedings to the Sacred Congregation, and shall inform the Sacred Congregation of the result thereof." The Archbishop of Varsaviae proceeded with the utmost care, submitting only two witnesses to judicial examination, who were considered worthy of belief, omitting the third.

A SYNOPTIC DISCUSSION: DEFENSE OF THE WOMAN. The advocate of this woman, having described the doctrine of the Church regarding impediments to marriage, both those that dissolve and those that impede, notes that the matter consists of the existence of an impediment of affinity of the first degree before the marriage, which, once incurred, dissolves the marriage afterward. Indeed, the woman herself, when asked when the carnal union took place with her future father-in-law, namely, in what year, in what month, on what day, at what time of day, at approximately what hour, in what place, after taking a prior oath, responded: "The carnal union between myself and the father of my husband took place in the year 1875, on April 22, at approximately the fourth hour, or as I believe, the fifth hour after noon; it was a clear day. This intercourse took place in the forest beyond the Vistula... in the valley where three oaks grow together. Only there."

[*Latin ed. p. 99*]

VLADISL AVIEN. 99. "I neither saw nor could anyone have seen anyone be a witness to this matter." And when asked whether the union had lasted long and whether it had been consummated, she replied: "I cannot accurately define how long it lasted... Suddenly, he forced me down, clearly overpowering me. I resisted and defended myself in every way, but in vain: finally, I completely yielded, and after I felt the pain, I ex-

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claimed. However, the basia [Baisieux] man pressed his mouth against mine and closed and blocked it, preventing me from screaming." Then, continuing, the woman recounts that she felt a strong pain and the effects of the completed union, which she openly declared to be perfect, and that after this union, she found herself in the state in which women are usually found after becoming pregnant; hence, the midwife herself recognized her as pregnant. Meanwhile, after the encounter with Ignatius, she entered into marriage within a month, without any doubt about the impediment. This, the lawyer continues, is confirmed by the excellent woman to the point of proof. Furthermore, she testifies that after the first intercourse, her husband realized that she was not a virgin: hence the injuries, the reproaches, and the insults, which, according to the advocate, demonstrate that the marriage had been contracted with a diriment impediment. Moreover, the lawyer asserts that the testimony of the actress is wonderfully confirmed and fully proven by the first witness, the seventh-hand witness, the nephew of Boleslaus. This man confesses that, immediately after the wedding, he observed hatred and indignation in his cousin Boleslaus towards his wife, which undoubtedly stemmed from the fact that he did not find her in a state of virginity, and he adds: "I observed an unusual affection of my uncle Ignatius, the father of Boleslaus, towards Philippina... so much so that at one point he said to me, if I had not been married, Philippina would have been, not a daughter-in-law, but my wife." The lawyer believes that this kind of testimony refutes Philippina's account; for it is the nature of a corrupt man to, once any embarrassment is removed, put everything forward to satisfy his wicked desires. Furthermore, he deduces the existence of the impediment from the unanimous agreement of the seventh-hand witnesses. They all renounce.

[*Latin ed. p. 100*]

100. VLADISLAVIEN. While acting as the advocate. Furthermore, the nephew of Boleslaus believes that Philippina is virtuous and well-behaved, and having frequently conversed with her about matters of religion, he has come to the conviction that she is religious. The advocate argues that the witnesses of the seventh class will conclude by providing proof in this matter. Indeed, such witnesses are called "of the seventh class" because they serve as an aid in confirming what the spouses have testified under oath, and in preventing collusion, which might occur between the spouses themselves. Therefore, since in this case the witnesses questioned about the estimation in which the actress is held, about her religion, and about her manner, have testified that she is incapable of lying and of perishing [i.e., of committing perjury]; hence, it is clear that their affirmations should be heeded, for they testify from their own knowledge, asserting that they know her. To these, the advocate adds the testimony of witnesses who have seen [events]. Maria Iedlinska, a Catholic, testified how Ignatius, the father

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of Boleslaus, behaved towards the future daughter-in-law. She responded that he would visit the actress's parents' home together with his son, when the latter was his suitor, and that he treated her with great affection, kissing her and caressing her, and that he would walk with her, without anyone accompanying them. Then, she recounted the rape that Philippina suffered, with all its details. Another witness, also of the seventh class, a Catholic and a public official, recounts almost the same things. With these facts established, the advocate believes that it has been clearly demonstrated that the woman had carnal relations with the father of her betrothed before the marriage, and therefore, not only illicitly, but also invalidly, entered into marriage with Boleslaus, the son of Ignatius, her father-in-law. Indeed, such witnesses, being unanimous and testifying from their own knowledge, provide complete proof, according to Cardinal De Luca, *De iudiciis*, book 3, chapter 32, paragraph 66. However, this is not enough, the advocate insists. Indeed, new witnesses, examined with the permission of the Holy Congregation of the Council, whom the Most Reverend Archbishop of Warsaw has found to be trustworthy, recount the same things. Finally, the advocate asserts that the impediment mentioned is also evident from the behavior of Boleslaus. Indeed, through...

[*Latin ed. p. 101*]

VLADISL AVIEN. Having been summoned to appear in court, with a specified deadline to present his case, he did not appear, nor did he provide any justification for his absence. Therefore, the Consistorial Tribunal, recognizing Boleslaus's contumacy, decided to proceed further with the case. The Advocate, however, argues that there is a reasonable cause to excuse this contumacy, namely, that he did not wish to conceal the shame that would befall his father, himself, and his family. For such marital disputes not only affect property, but also the persons whose honor and dignity are involved, and are always conducted with great concern and care by both parties. Indeed, in this case, this is hardly the situation. The man appears to have been contumacious in such a delicate matter, contrary to common practice. Therefore, not only is there a reasonable cause for which he did not wish to conceal the shame of his family, but it is clear that he deliberately and with premeditation embraced contumacy in order to avoid a greater disgrace to himself. Subsequently, the Advocate addressed the objections that might be raised against him, stating that no difficulty could arise from the fact that a woman invokes a legal action after ten years – and institutes it against the nullity of her marriage, due to a diriment impediment. For it was manifest that she was ignorant of the diriment impediment; but having become certain of the impediment, she instituted the legal action. Therefore, if she had known from the beginning of the impediment that prevented the marriage, she would not have contracted it. And since, according to canon 64, section 6, those things that are done

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contrary to the law must be considered as if they had not been done, a marriage contracted with a diriment impediment is entirely invalid and null. Nor does continuous cohabitation of the spouses constitute an obstacle. For, he says, ignorance and good faith do not excuse from the consequences of a diriment impediment; for the laws that render something invalid also affect those who are ignorant, according to Oard. D'Annib. III § 398; Gury II, n. 787. Regarding the matter, the Sacred Congregation of the Holy Office stated in an instruction addressed to the Apostolic Vicar of Ayutthaya in 1854: "It must also be noted with regard to diriment impediments, that invincible ignorance..."

[*Latin ed. p. 102*]

102. VLADISLAVIAE. Bona fides non sunt sufficientes, ut matrimonium valide contrahi possit. Et quamquam, quod tamen raro creditur in praxi, ignorantia et bona fides aliquando excusare possint ab peccato, tamen numquam efficere possunt matrimonium validum, quod, ob obice dirimente, irritum fuerit. Collect. Parisien, n. 950. Nec potest dici quod hoc matrimonium fuerit convalidatum per copulam subsequendam. Nam, ait Ferraris: « Matrimonium nullum ex publica causa, sicut esset in casu, in quo testes de visu, de existente impedimento dirimente ante matrimonium cum iuramento deposuerunt, nova indiget praesentia parochi, ad illud convalidandum, et non valet dicere fuisse ratificatum per copulam subsequendam ». Verb. matr. art. 7, n. 19. Nec pariter obstat contumacia asserti mariti. Nam refert patronus, Sacra Congregatio, nonobstante contumacia unius partis, causas remittere, ne pars innocens damnum pateretur, sicut videre est in Tergestina, Matrimonii, 10 Iunii 1876 (1). Nullus demum difficultas oriri potest a sententia curiae Metropolitanae. Tota enim ratio decisionis Iudicii Metropolitani in eo stat, ut « depositiones testium in causa hac indagatorum careant notis veritatis, cui plena fides habenda sit ». At assertio huiusmodi, subsumit patronus, est omnino gratuita: ac proinde facile dimitti posset cum notissimo adagio: « gratis asseritur, et gratis negatur ». Praeterea observandum est depositionibus iuratis mulieris, quam omnes testes, praesertim septimae manus, appellant incapacem mentiendi et perierandi; ac depositionibus iuratis testium de visu, attenta eorum probitate et religione, comprobata a testimonio iudicis regionalis et parochi, iuxta ipsum Defensorem matrimonii ex officio Vladislaviae. Plus enim fidei est duobus testibus positivis, qui scilicet aliquid sibi notum praecise affirmant, quam mille negativis, illud ignorantibus, aut testantibus contrarium audivisse, sicut post textum in cap. Ad nostram de probat, docet Farinaccius de testibus, quaest. 65, r (1).

(1) Recole, Vol. X, 376.

[*Latin ed. p. 103*]

VLADISLAVIEN, 103, n. 20; and the Holy See, in Constantinople, con-

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cerning Decimals, July 1, 1757, before Caprara, § 13. Therefore, no difficulty can arise from negative witnesses or those ignorant of the facts. Consequently, the assertion of the Metropolitan court must be considered not only gratuitous, but entirely unfounded and utterly irrational. For no one is presumed guilty unless proven so; therefore, the asserted reasoning of the Metropolitan court, namely that the witnesses lacked signs of truthfulness, is of no value. Furthermore, it is observed that it is not surprising that the witnesses, upon seeing nothing, did nothing to prevent a shameful outrage. Indeed, they foresaw the evils and prejudices that might befall them. For it was a matter of a noble man, inflamed by lust for a woman; it was a wicked concupiscence that obscured reason and understanding; therefore, following the rules of the most prudent caution, they avoided the damages and prejudices that they might encounter. For the same reasons, Ignatius was least able to think and perceive the persons who might be present behind the bushes. For the terrible movements of concupiscence are equated to madness and fury, so firmly obscured by the darkness that it clouds the intellect. Finally, the advocate states that these facts are confirmed by supplementary documents, namely, two other witnesses who were examined by a special grace of the Holy Congregation, and whom the Archbishop of Warsaw found to be trustworthy. These, the advocate concludes, certainly refute the judgment of the Metropolitan. For they not only confirm what the previous witnesses affirmed, but they also eliminate the difficulty raised by the Metropolitan himself, namely, that "no one in the city was informed of this event."

OBSERVATIONS OF THE DEFENDER OF HOLY VOWS. But, on the contrary, the defender of marriage begins with the testimony of the woman. "For the first time, I consummated my marriage with my husband after one week from the wedding. I gave birth to my first child on January 30th or 31st, in the year 1876. After the first intercourse with my husband, he realized that I was not a virgin; he reproached me, saying that I had been raised honorably and religiously, when in fact..."

[*Latin ed. p. 104*]

104. VLADISLAVI AVIENUS, postea invenit res aliter se habere. Exigebat ut profiterem quomodo res se habuerunt: ego omnia praefata negavi. Post natum primum infantem, non dicebat: eum non esse ex se genitum... suspiciones aut convicia nulla deinceps excitabat, sed fuit plane indifferens, nihil me curabat, numquam ullam fecit animadversionem, etsi id facere deberet. Ego maritum amabam et affectu prosequebar, non enim me ream sentiebat, discors igitur cohabitatio nostra non erat.

Anno autem 1885, decimo scilicet ab initiis nuptiis, Boleslaus, Philippinae vir, peculatus crimine insimulatus ad exteras plagas fugere coactus est. Tum primum Philippina, quippe quae mariti ignominiam atque absentiam aegre fert, initi cum Boleslao matrimonii poenituit; et modo in

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leves auras illud amandare contendit, aiens: "Mense Ianuario anni currentis comperto in confessione generali, coniugium meum cum Boleslao esse invalidum, recurri cum instantia ad Consistorium." Nemo est, notat Orator, Philippina fortunatior: per decem annos perfruatur coniugalibus deliciis atque firmissime credit se in valido ac licito matrimonio versari; nam ait: "Non enim me ream sentiebam." Decimo ab hymenaeo anno, fortuna mutatur, at Philippina mirabili mentis serenitate cogitat confessionem generalem; et vide prodigium! generali confessione a matrimoniali vinculo, prodigiosa confessarii virga ictu oculi se expedit. Absit ut suspiciet, Philippinam ex iurisconsultorum consilio confessionem generalem ad facinus faciendum in medium afferre; sed quaerit qua ratione fieri potuerit, ut puella adeo sancta, pietatis sensibus imbuta ab incunabulis, immane scelus matrimonii cum Boleslao, cuius a patre conceperat, nuptiali in confessione et per decem annos confessariis celaverit? Tum solum, cum Boleslaus, cooperatus ignominia, exilii viam arripuit, ex admisso crimine sancta femina solicita fuit generali confessione captare emolumentum! Quum defensor perpendisset verba Philippinae, genesim affinitatis enarrantis, vix intelligi potest, ait, quomodo fieri...

[*Latin ed. p. 105*]

VLADISL AVIEN. It is possible that a man of sixty years could overpower a young woman of twenty-one, restrain her, and, pressing his lips to hers, close her mouth and prevent her from crying out. Nor does he understand how it could have happened that an innocent girl, while clearly being violated, perceived that "this act of copulation was precisely as her husband, and she herself, practiced it with me, and was suitable to make me pregnant." Furthermore; the place where the crime occurred, as described by the victim, Philippina, in her deposition, is thus: "One day, he took me (Ignatius) beyond the bridge, into the forest, where we sat on a hill, not very far from the road." However, in her judicial examination, she states: "The act of copulation took place in the forest, beyond the Vistula, from the left side of the road leading towards Bobrowinski, in a valley, where three oaks grow together." The hill and the valley are certainly not the same thing: nor is it easy to believe that Philippina's tongue slipped, or that her memory was unreliable; rather, one would believe that she desired to see oaks on the hill, trees that might obscure the view. However, so that the avenger of the marriage, Philippina, or rather, the *i i*, whose counsel Philippina uses, does not fail, they know that unless this crime was public and notorious, or proven by suitable witnesses, the marriage cannot be obtained on that occasion, as stated by Alexander III in chapter *De eo qui cogn. consang.*, etc.; therefore, Philippina presents three witnesses, one of whom, the most valuable, is dead. The advocate notes that, after the testimonies of two witnesses have been heard, no one will be surprised by the agreement of the witnesses, the sobriety of their speech, and the

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clarity of their statements. Indeed, the circumstances of the time, the hour, the place, and other details are recounted by both witnesses in almost the same words. One will not find any omission of a past circumstance that could be relevant to the matter. For example: John, after stating that he only recognized Philippina and Ignatius by sight, "I knew them by sight, as is the case in every small town," wisely adds: "Standing nearby, I could not be mistaken as to the identity of the persons of Ignatius and Philippina." Similarly, Mary, after stating: "I knew..."

[*Latin ed. p. 106*]

106 VLADISL AVIEN. The actress, even though she had not yet been married... Regarding Ignatius, he was sometimes present to me in the street before the actress's marriage," concludes his testimony with these words: "Furthermore, I add that Ignatius was well known to me, so that I could not have been deceived about his person at the moment when Philippina committed the outrage." However, the circumstances, which, it appears, were not accidentally, but deliberately, presented to make the account seem plausible, are, according to the defender of the marriage, entirely dissimilar. Thus, for example, Ignatius and Philippina state that they did not see the witnesses at all. On the contrary, Mary and John clearly saw Ignatius and Philippina going, lying down, and returning. Furthermore: Mary and John were sitting on an open hill. Could it have happened that neither Philippina, a girl eager to see, nor Ignatius, who was seeking a secluded place to commit the crime, would have noticed the presence of Mary, his wife, his sister? Furthermore, Philippina states: "The act of intercourse took place in a valley, where three oaks grow together." However, Mary testifies: "They (Ignatius and Philippina) could not have seen us, because we were sitting higher up than they were, and dense trees were in between." This is utterly incomprehensible to the orator. For it is the nature of sight that, through the branches that were between one tree and another, Ignatius and Philippina, who were lying close to the ground, could perfectly see Mary, her husband, and John, but Mary, her husband, and John could not see Ignatius and Philippina, who were further away. Indeed, he exclaims, who among the upright and worthy would believe Mary and John, and her husband, who, devoid of all human feeling, with cold eyes, and unmoved, witnessed the young girl being violated with atrocious and savage force? Moreover, Mary continues: "After this event (the outrage), I felt such hatred towards Philippina that I could not bear to look at her, nor did I ever see Philippina or her father-in-law again, except in public gatherings." But, the Orator asks, if Mary believes in herself, if she believes in her brother...

[*Latin ed. p. 107*]

VL A.DISL A.VIEN. 107 To those who witnessed the tribulations in the Philippines, what could possibly arise from this, except perhaps a cause

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for aversion towards the unfortunate Philippines, or even contempt? But in order that the love of truth may be clearly perceived by these witnesses, let us consider the words of Mary, who first testifies: "I know that the actress initiated a process concerning the annulment of her marriage based on the title of affinity, of which I was informed in the years 1879 and 1880... although I already knew, even before that, that an affinity existed between the actress and her husband." Then she testifies: "After reading to me, behind closed doors, a deposition, I mean, I testify that in the years 1879-80 I spoke with the actress about her fall, and that this fact was the only thing known to me, without me knowing that this would lead to the nullity of the marriage of the Philippines, or that an affinity had arisen between them; finally, I learned about this affinity at the beginning of this process." Indeed, the sister of Mary laughs, as she recounts that she heard their mother, with a face flushed with anger, because she had only walked with the man, say: "A virtuous woman has become the victim of the lust of the old man Ignatius, the father of her husband, since she had only gone for a walk with him across the Vistula." And she adds, that when, burning with indignation, she denied believing this story, her mother said that she knew this from her brother John. Then the sister, Mary, who was with us, added that it was true, because she herself had witnessed the violence inflicted upon the Philippines by Ignatius. But the defender of the marriage pleads that attention be given to the fact that this witness was brought in for examination on October 27, 1892, while the cause concerning the Philippines had already been dismissed on May 7, 1888, in another jurisdiction. Therefore, this woman is a witness brought in by the Philippines, after the Philippines had already published her testimonies, for and against. Indeed, as Clement V states in chapter 2 of the Clementines, concerning witnesses; witnesses properly received and their testimonies published, subornation is to be feared. This subornation of witnesses is to be feared, not only because the witnesses, by whom the Philippines seeks to prove her alleged rape, are...

[*Latin ed. p. 108*]

108 VLADISL AVIEN. are bound by the ties of blood, being siblings; but also because the testimony of one directly contradicts the testimony of the other. Therefore, one or both of them necessarily utters a falsehood. And indeed, the woman stated: "When, inflamed with indignation, I denied that I would give credence to this account [of the rape], my mother said that she knew this from my brother, John." John, on the other hand, swore: "I have never spoken to the actress, nor to her, nor to Ignatius, nor to either of the spouses, about this rape, and in general, I have not mentioned it to anyone. With my sister, we concealed the matter from each other, as if nothing had happened." Furthermore, the advocate continues, even if Philippina and the witnesses she has presented are not entirely free from error, it does not necessarily follow that the marriage brought into dispute must be annulled.

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For it is necessary that the impediment of affinity, once incurred, not be subsequently removed by dispensation, and then immediately reappear. In the present case, everything points to the existence of an impediment of affinity, whether it was present before the marriage, or whether it was secretly removed by dispensation during the ten years of peaceful cohabitation of the spouses. For in truth, there was a complete concealment of the impediment. Indeed, from the three witnesses, Mary and John, who are still alive, swear that they have maintained such strict silence on the matter that they did not even consider it permissible to speak about it with each other; the other sister, whose testimony Philippina presents, not only testifies: "My mother reassured me, saying that my brother, John, had solemnly promised her that he would not reveal what he had seen," but she adds: "I have never spoken to anyone about this matter, not even to my brother, John." It is, moreover, quite clear that knowledge or suspicion of the rape reached no one, before Philippina brought this matter before the present court. For if anyone had spoken about this for so long a period of time, the parents, relatives, and family members, that is, even those remotely connected, would have had no way of keeping it secret. Now, to the judge who asks: "What do you believe

[*Latin ed. p. 109*]

VLADISLAVIEN. "What was the principal reason that prompted the actress to initiate this process?" All the witnesses replied: "Nothing new, I know nothing." Furthermore, the defender of the marriage stated: "It is unlikely that the image presents falsehood, Rota Dec. 535, n. 81, part. 14, recent." But it is quite the opposite that Ignatius and Philippina became one flesh, when it is clear that no one from among relatives, affine, or familiar connections, even though Ignatius had Philippina in his sight from a young age, ever observed them engaging in excessively familiar behavior with each other. If the witnesses of the seventh hand were questioned individually by the judge: "Do you know anything relevant to this case?" they responded with one voice: "I have nothing further to say." Given these circumstances, the orator Mtochi declares: "I observed (so he says) an unusual affection of my uncle Ignatius, the father Boleslaus, towards Philippina, so much so that on one occasion he said to me that if he had not been married, Philippina would not have been his daughter-in-law, but his wife." Is it easy to believe that a man of sixty years, already married, would desire to marry a young woman of 21 years? Moreover, Sigismund, when he says: "I observed an unusual affection," he speaks of impressions, not of facts. Did Ignatius ever observe Philippina displaying those signs of affection in secret, which she would not dare to show in public? To this, Sigismund himself responds without hesitation: "I have nothing further to say." However, the defender continues, let us suppose that this old man, Ignatius, for a moment, lost control and succumbed to love, pressing the

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young woman into a relationship: even then, the matter would be of a completely hidden nature. But now, hidden obstacles are relaxed, and the records are preserved for future memory, with distant witnesses and arbitrators. It is rightly presumed that what was to be done was done. If Philippina did not have intercourse with her father Boleslaus in Sonnino, then Philippina should have undoubtedly revealed this to the spiritual doctor in the Sacrament of Confession. No one is so impious as to suspect that Philippina would...

[*Latin ed. p. 110*]

Vladislaus, it is said, constantly concealed a heinous crime, or that the impediment to marriage was removed by some hidden dispensation, through the intervention of a confessor. However, she is not to be heard, according to some, because she claims: "I confessed the very sin before the marriage, adding nothing; and I did not sin, because at that time I considered my father-in-law as a stranger." Such defenses, it is argued, are available only to lawyers, not to women. Finally, perhaps for the sake of truth, the defender observes that, after learning of her adversary's arguments, and beyond others, the nature of the hidden impediment, after another court's judgment, Victor Nehring was brought in, who testifies that he heard talk of this outrage in a certain public tavern. From this, the defender concludes that Victor Nehring, the sole witness, recounts a narration made by a man, Boleslaus, now deceased, before Adam Grassowski, of unknown domicile: "It is a great thing, if he speaks the truth!" With these premises, the question was raised whether the judgment of the metropolitan court of Warsaw on May 7, 1788, should be confirmed or overturned in this case.

RESOLUTION. After deliberation, the Sacred Congregation decided to respond: "The judgment should be confirmed."

FROM WHICH ONE MAY GATHER:

I. That invincible ignorance, or even good faith, cannot render a marriage valid, when it is null and void due to an impediment, because the laws that render a marriage invalid also affect the ignorant.

II. That a marriage is valid and remains so, when the impediment of affinity has not been formally removed.

[*Latin ed. p. 111*]

In RHEIMS. DECREE CONCERNING CANONICAL INSIGNIA, dated February 23, 1895. The Archbishop of the Archdiocese of Rheims, Cardinal Gousset, in the year 1851, obtained from Pope Pius IX the privilege of canonical insignia for the Chapter of his Cathedral Church, as is contained in the following brief: SUMMARY OF THE MATTER. POPE PIUS IX. "For the perpetual memory of this matter, we willingly grant the dignity of

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insignia to the Canons of Cathedral Churches, who faithfully fulfill all parts of their office, so that external signs of honor may be added to the inner ornaments of virtues, from which the true and genuine praise of the priestly life arises. Therefore, since our beloved sons, the Reverend Fathers, the Cardinal Gousset, Archbishop of Rheims, has testified to Us with great sincerity that the Canons of that Metropolitan Church excel in commendable piety, grave morals, and in the performance of their duties with exceptional diligence, and that they have also been of every effort to their Superior, both in celebrating the diocesan synod and the provincial council, and in all the recent institutions established according to the norms of the Holy Roman Church, which is the Prince and Mistress of all Churches, We have readily been moved by the prayers of the aforementioned Archbishop of Rheims, so that the Archdeacons and Canons of that Cathedral may be adorned with a large woolen cape of a violet color, and with a special Cross of Saint Remigius, to be worn upon the breast. Therefore, wishing to favor all and each of those to whom these Letters apply with a special benevolence, and to absolve them from any excommunication, suspension, interdict, and from all other ecclesiastical sentences, censures, and penalties of any kind, or for any reason, if they should have incurred them, for this reason alone, and considering them absolved,

[*Latin ed. p. 112*]

112 RHEIMS. By these Letters, with Our Apostolic authority, We grant, for all future times, the faculty to all and each Archdeacons and Canons of the Metropolitan Church of Rheims, to wear a large woolen cap of violet color, in the manner of the Canons of the Patriarchal Basilica of the Vatican, and also to bear upon their breast a Cross, which is called that of St. Remigius, whose form shall be octagonal, of violet color with a white line running along the edge, and whose corners shall be silver points, and in the center, or at the center of the Cross, there shall be a coin, on one side bearing the image of St. Remigius, and on the other, the image of the Blessed Virgin. Furthermore, We earnestly hope that the Canons of the Metropolitan Church of Rheims will be more encouraged by this new addition to their vestments to fulfill the duties and obligations of their office, and to exhibit to the faithful more illustrious examples of piety and religion. We decree that these Letters shall be firm and shall always have their full and complete effect, and that they shall be perpetually observed by those to whom they pertain, and that, should any judgment be rendered by ordinary or extraordinary judges, or by the Most Holy Roman Church, it shall be considered valid, and that whatever is contrary to this shall be declared null and void. Nevertheless, without prejudice to the blessed memory of Benedict XIV, Our Predecessor, concerning Divine Matters (sic) and other apostolic Constitutions, and sanctions, and all other contrary things whatsoever. Given at Rome, at St. Peter's, under the Fisherman's

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Ring, on the 16th of May, 1851, in the fifth year of Our Pontificate."

The same Archbishop, in interpreting the will of the Pope concerning the execution of this Rescript, declared that only the titular Canons were to be considered worthy of this honor, excluding the honorary Canons. Indeed, it appears that such insignia have been exclusively granted to the titular Canons up to the present year, when the honorary Canons, adhering to the general rules of civil law, and also to a letter from the Holy See, began to claim the right to wear the same insignia granted to the titular Canons by privilege. However, this was opposed, citing the observance of forty-three years.

[*Latin ed. p. 113*]

RHEMEN. 113, nor the intention of the Supreme Pontiff, who desired most earnestly to satisfy Cardinal Gousset's will, which had been expressed through prayers, and most clearly and explicitly in the execution of the Brief. To appease this dispute, the Archbishop, Cardinal Langénieux, selected certain men, both among the titular and honorary Canons, and among the officials of his own Curia, to whom he entrusted the task of deliberating on the matter through a consultative vote. This college of men, legitimately constituted and convened on a certain day, divided into two opinions; the majority of the honorary Canons expressed a favorable opinion, namely, of the seven, five were of the opinion that the right to bear the insignia belonged equally to the honorary and titular Canons, while the other two held the contrary view. However, the Chapter did not agree with this opinion, and therefore the Archbishop submitted the controversy to the Sacred Congregation for the consideration of the matter on September 12, 1894.

Dispute: Synopsis of the Rights of the Chapter.

The following arguments are presented by the Chapter to deny the honorary Canons the communication of this privilege:

Firstly, they note three facts: the prayers and the intention of Cardinal Gousset, the issuance and execution of the Brief, and the continued, until the present time, observance of this privilege, which clearly assigned this privilege only to the titular Canons, so that it should not be extended further. They particularly insist on the observance of 43 years, which has served to prescribe any right against the honorary Canons.

Then, they invoke the respect due to so eminent a man; so that it would be a grievous thing to think that he was ignorant of the Pontifical Brief in such a serious matter, or to have failed to obtain or execute it, and that he would wish to change his will, which has been so clearly manifested.

In addition, they note that there are 31 honorary Canons assigned to the Chapter who reside in the Diocese, and 10 who reside outside the Diocese, and therefore it would be so lavish to grant such a special privilege, that it

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would be quite demeaning, indeed ridiculous.

[*Latin ed. p. 114*]

114. RHEMEN. Those Canons, performing sacred duties in villages, in rural areas, and in poorer churches, scattered throughout the diocese, and adorned with almost pontifical insignia, appeared to be acting out a comedy rather than treating holy mysteries. Therefore, they say that this is so contrary to the accepted custom and to the intention of the Chapter and the Archbishop, when they were assigned to the honorary Canonry of the Chapter, that one must seriously doubt whether their elections are valid, after such a serious alteration has been introduced into their rights. For the Chapter protests that it never gave its consent, if it had considered that these rights would be derived from honorary Canons. Finally, the Chapter concludes its protest to the Archbishop in this way: "It must also be added that if Cardinal Gousset had been able to suspect the claims raised in these days, he would have inserted restrictive terms in the Decree, which would have prevented them, or he would not have requested anything at all. What he did not request can be obtained, and can be agreed upon in fact, as you yourself have obtained, Eminence, for the Chapter of Tarbes, as have the Archbishops and Bishops of Rouen, of La Rochelle, of Soissons, for the titular Canons and prebends alone." Furthermore, from common law, this seems to favor the intention of the Canons. Indeed, the question is about interpreting a written text, whose words are not clear; it is not certain whether the text refers only to titular Canons, or whether honorary Canons should also be included. When the words are obscure, and the intention of the author is clear, one must follow that intention, according to L. 219 ff. of the Code of Canon Law. In agreements, it is the will of the contracting parties that should be considered rather than the words, and as is stated in chapter 15 of De Signis, "not the intention of the words, but the words of the intention should be followed." Now, the titular Canons say that the intention of both the Chapter and the Archbishop was clearly evident from the petitions offered to the Pontiff, in which the matter concerned only 10 titular Canons, and the reasons given referred only to titular Canons. Therefore, although privileges admit of a favorable interpretation, this...

[*Latin ed. p. 115*]

RHEMEN. Certain authors (d'Annibale, P. I, n. 187) state that the law is sometimes not applicable in two cases: 1° when the matter under consideration requires it, and 2° when a case arises which is so utterly unusual and so foreign to the reason of the law that it would seem absurd, or unjust, or irrelevant, or entirely removed from the intention of the legislator. Indeed, the reason of the law is the soul of the law, especially when it comes to privileges granted not spontaneously, but at the request of someone. Regarding prescription, it should be noted that it appears to be invoked in this case

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without justification, for it is generally held by canonists that privileges are not lost through non-use, as can be seen in Pirhing, lib. V, § 33, n. 176, and Reiffenst., lib. V, § 33, n. 209; but this applies to privileges that do not harm the rights of a third party, as these same authors widely state. However, in this case, the injury to the rights of a third party seems undeniable. For the very complaints in the Titularium demonstrate how grievously they feel about the extension of such privileges to honoraries. This is because, by using this privilege, the honorary canons would harm the rights of the Titularians, who ought to be distinguished from the honoraries; they would harm the intention of the granted privilege, and would practically nullify and reduce it to nothing, so that it would not be the use of a privilege, but rather a monstrous abuse.

RIGHTS OF CANONICAL HONORARIES. But, in favor of the canons, who are enrolled in the Chapter for the sake of honor, the following should be noted. Firstly, it would be futile to seek in the Decretal law a text by which the rights of such canons could be confirmed, for at that time the species of canons was unknown; as is clear from Fagnano, com. in cap. Dilectus de Praeb., n. 10, and therefore, such documents relating to these rights can only be found in the most recent law. It has been customary, in particular, for canons to renounce their rights for the sake of honor, namely, presbyters who have rendered outstanding service to the Christian cause in the diocese, who could not be increased in number due to the diminished number of benefices. Although these canons are enrolled in the Chapter by title of honor, they do not possess the rights pertaining to canons in benefices, nor do they have an active or passive voice in the Chapter, nor do they have any right to present a candidate for a vacancy, as has been decreed.

[*Latin ed. p. 116*]

116. RULING. The Sacred Congregation of Councils, under the dates of January 11th and August 29th, 1868, in the case of the City of Civita Castellana concerning "preeminent rights and the right to vote in the chapter" (1); nevertheless, those things which pertain to honor should not be denied to them, as their very name demands. Therefore, honorary canons have the right to wear vestments, canonical insignia, and to sit in the choir behind the last titular canon, as the Sacred Congregation of Councils responded on July 6th, 1867 (2): because in the same decree, in response to the third question: "Whether canons, for the sake of honor, ought to receive sacred vestments in pontifical functions; whether the *planeta* or, rather, the *dalmatica* or *funicella* must be prepared;," it was written: "To the third question, if the canons are distinguished by orders, namely, the presbyteral, diaconal, and subdiaconal orders, honorary canons ought to wear the *tunicella*; otherwise, they should wear the same vestment common to all titular canons of whatever order." Indeed, it should not be

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denied that, sometimes, by a special constitution, only certain honors may pertain to honorary canons, but not all; as is inferred from the decision of the Sacred Congregation of Councils of May 29th, 1869, in the matter of the Division of Sacred and Funerary Administration (3); but clearly, the rights pertaining to honor, when compared to those of titular canons, should not be restricted in the case of honorary canons, unless this is expressly stipulated in the founding documents; for the common law holds until a particular law is clearly demonstrated. Indeed, in the brief document in question, the insignia are granted indiscriminately to all and each canon, without any distinction; but it is especially true where the law does not distinguish, neither should we distinguish. Furthermore, under the name "canons" in matters that are favorable, and which pertain to the honor of the title, both canons and prebendaries are included indiscriminately, according to the most learned of jurists. For favors are to be extended, but hatreds are to be restricted, and in chapter 2, concerning donations, it is stated: "In contracts, in wills, and in benefices (of Princes), the fullest interpretation is to be given."

(1) Compare Volume IV, 177.

(2) Recole Volume III, 138.

(3) Recole Volume IV, 577.

[*Latin ed. p. 117*]

RHEMS. 117. Furthermore, it has been established that privileges can be prescribed even through disuse. However, it is well-established among the Doctors that gracious privileges, or those which do not infringe upon the rights of others, cannot be prescribed, even after a very long time, as Saint Alphonsus affirms in *Opera De Privilegiis*, chapter I, paragraph 9, stating: "Gracious privileges, which do not burden others, such as dispensations, exemptions from fasting, and the like, are never lost through disuse, and even through contrary use; although after a very long time." Similarly, Suarez, *De Legibus*, I, 8, chapter 34, paragraph 17. Indeed, in matters concerning privileges, whether pertaining to a privileged faculty or to facultative matters, prescription does not apply. However, the improper use of privileges is extremely harmful, and, as the Titular Canons rightly insist, it must be restrained, lest privileges become obsolete and exposed to the derision of wicked men; and in this matter, all avenues for abuse are closed if the Decree of the Sacred Congregation, dated September 16, 1884, is properly observed (1), which begins with the words "Quamvis Ecclesiasticos," concerning honorary canons and another document issued by the Sacred Congregation in the form of a Brief, dated January 29 of the preceding year (2), in which it is most carefully stipulated that the number of canons holding honorary positions outside the diocese should not become excessive, and in § III it is stated: "Those who are canons in a metropolitan, cathedral, collegiate, or minor basilica church outside the

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city shall use their privileges and insignia only in the diocese in which they were appointed." With these points established, the following doubt was to be resolved: Whether the privileges granted to the canons of the Cathedral Church of Rhems by a Brief of the year 1851 should extend to honorary canons in such cases.

RESOLUTION. After deliberation, the Sacred Congregation, on February 23, 1895, decided to respond: Affirmatively, but only in capitular functions.

(1) This decree is found in Volume XVII, page 554.

(2) This decree is found in Volume XXVI, page 449.

[*Latin ed. p. 118*]

118. REMARKS. From which [points] one may gather. I. Honorary canons, although they can possess the privileges and insignia of canons titular, do so only within the Church to which they belong for the sake of honor, and in which chapter functions are performed, excluding other churches, even within the same diocese, or other dioceses. II. Therefore, it is not permitted for honorary canons of any chapter to wear its insignia, so that, separately and individually from the chapter, they may perform sacred functions in any church. BARCELONA. Regarding the faculty of celebrating Mass. On February 23, 1895. Through summary petitions. SUMMARY OF THE CASE. In the plenary Congregation of July 23, 1892 (1), among the petitions presented, the most wise judgment of the Most Reverend Fathers also considered the petitions of the pastors of the churches of SS. Gervasius and Prothasius, and of the Blessed Virgin Mary under the title of Bonanova, in the diocese of Barcelona, in Hispania. They stated that, in that vast parish, which has more than 9,000 inhabitants, only four Masses were celebrated on feast days, although within the boundaries of the parish there were four chapels of nuns, in which Mass was celebrated; therefore, they requested "that two priests, namely the pastor and his assistant, or any other priest designated by the pastor, may celebrate Mass on feast days, without prejudice to the Masses that could be celebrated in the aforementioned four chapels of the nuns." To this, the following response was given: "Regarding the faculty of celebrating Mass for only one Mass, while the circumstances endure, it is left to the judgment and conscience of the Bishop." However, the pastor was not able to enjoy this grace; indeed, at this time, the circumstances described in the petition have changed, since new religious houses have been built within the boundaries of the parish. This petition was referred to, Volume XXV, 182.

[*Latin ed. p. 119*]

BARCELONA. There are 119 souls. Therefore, the parish priest again approached the Most Holy Prince, explaining this: "Because religious soci-

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eties or communities, according to the geographical position of the parish, can be indefinitely increased, as has happened up to now, the parish priest, rightly moved by the spiritual detriment of souls and anxious, requested of the Most Holy Prince that such a faculty be constantly granted, on feast days, for at least two priests, so that nothing may hinder the future establishment of many public chapels or oratories, lest the multitude of the faithful, as sometimes happens, be exposed to the grave danger of missing Mass on a feast day, due to the insecurity of Masses in the parish. This request does not seem unreasonable or without foundation; for the spiritual needs of the parish strictly require, on feast days, the celebration of at least six Masses; indeed, the number of parishioners increases daily, and the throng of pilgrims from the entire principality of Catalonia and from other kingdoms, coming to visit the Blessed Virgin Mary of Bonanova, grows ever stronger." "Consequently, it often happens, as is customary, that after the High Mass at the eleventh hour, many are asked whether another Mass will be celebrated; indeed, they testify that they have come from afar, or are hindered by some domestic occupation, and therefore are unable to hear Mass. Furthermore, as the Bishop beautifully recounts in the information attached to the Rescript, not all the faithful, even if they wish to, can conveniently and properly hear the Holy Sacrifice, with only a few Masses celebrated, either because the distances are very spread out, or because the duties of the parishioners are so diverse that, while some go to hear Mass, others must remain at home to perform domestic services, and finally (which is of the greatest importance) because the dimensions of the parish church are not sufficient to accommodate all the faithful, unless at least seven Holy Sacrifices are celebrated on all feast days." "This duty, the parish priest certainly cannot fulfill with only three priests assigned to such a parish, namely, the parish priest himself and two coadjutors, of whom..."

[*Latin ed. p. 120*]

120. BARCHINONEN. One of them does not receive a stipend from the Government. "This is the distribution of the clergy in this parish church, and nothing else." "However, it seems insufficient to satisfy the parish's pressing needs, considering that there are five religious houses and seven public chapels, and others that may be created in the future, all of this condition; since the Masses that are usually celebrated in the aforementioned churches and chapels are more oriented towards the respective community than towards the spiritual benefit of the faithful; because they are directly ordered for the particular or private use of the community and are celebrated only at times convenient to it; furthermore, neither the aforementioned churches nor chapels are sufficient to accommodate the many faithful." "Given these circumstances, it is clear that the aforementioned chapels or public oratories scarcely contribute any benefit or utility to the parish; therefore, it is not enough to impose such a heavy burden on the

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parish priest, who, indeed, without the ability to ordain at least two priests, does not know how to properly nourish the faithful towards eternal life. Indeed, the parish would be greatly burdened if, whenever a new church or public oratory is opened, prayers would also have to be recited anew, for fear of the obsolescence of the decrees; considering the small assistance that is provided to the parish church by the aforementioned religious houses and public oratories, and the increasing difficulty, more and more each day, of finding external priests to celebrate, as is evident from the prayers presented: it is truly and realistically necessary that six Masses be celebrated in this parish church of Saint Gervasius, on all feast days, for the benefit of the neighbors and also of pilgrims who come daily from distant lands to visit our parish's patron saint. Therefore, I earnestly request of Your Eminence the grace that at least two priests may always be ordained on feast days, notwithstanding the Masses that may be celebrated in the aforementioned religious houses or public oratories, whether existing or future, of the same condition." The Bishop, as is customary, first transcribed what he had already written on this matter on another occasion, and then added what seemed appropriate here.

[*Latin ed. p. 121*]

BARCELONA. 121. "The parish of Saint Gervasius, mentioned above, deserves particular attention, since it encompasses nine thousand souls, who are spiritually nourished by the parish priest, assisted by one assistant priest and two other priests residing there. Its territory extends for one hour and three quarters from east to west, and three quarters from north to south. However, this distance presents a difficulty for the faithful, as they may not be able to fulfill the precept of attending Mass due to the limited number of Masses celebrated in the parish church. This difficulty is exacerbated by the fact that, while some members of families attend Mass, others must remain at home to perform domestic duties. Furthermore, the parish church is narrow, and can only accommodate, more or less, a thousand faithful. Consequently, even if the distance were not an issue, the faithful would still be unable to fulfill the precept of attending Mass due to the limited space in the church. This need increases during the summer months, when the population of the town of Saint Gervasius often reaches 14,000, as many citizens of Barcelona are transferred there for recreation during the hot summer months. Within the boundaries of this parish, there are six public chapels belonging to religious houses, where Holy Mass is celebrated daily, and to which the faithful can therefore go to attend Mass. However, since these chapels are small, they do not entirely alleviate the difficulty. Moreover, the priests who celebrate Mass there cannot be compelled to celebrate Mass in the parish church, since three of these chapels belong to monasteries, and the others belong to convents of religious sisters who observe a vow of enclosure. Finally, external priests cannot be called upon, since those who

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are generally assigned to their own churches are usually occupied on feast days, and only a few are available, and only for an extraordinary fee, which this parish cannot afford, to provide this service outside the city." And then it continues: "It is now important to add that the various circumstances that must be taken into consideration are..."

[*Latin ed. p. 122*]

122 BARCHINONEN. Then, the aforementioned parish presented the following circumstances: "1. The number of priests assigned to the service of that church, together with the parish priest, was formerly five, but now there are only three: a wholly inadequate number, since on feast days, at least seven Masses are necessary in that parish church, according to information later given to me by the parish priest, and not six as stated in the petition." "2. The number of inhabitants has increased to the point that the population is now counted at 12,000, whereas it was formerly 10,000." "3. The influx of pilgrims to that parish church (indeed, a celebrated shrine of the Blessed Virgin) from various places necessitates the celebration of Mass at midday on feast days, whereas many faithful people visit the Blessed Virgin at that hour and do not hear Mass." These circumstances, considered in light of the aforementioned parish church's limitations, lend force to the petitioner's request and strengthen it. However, it is true that new religious houses have recently been constructed within the boundaries of that parish, increasing the number of existing ones, so that there are now twelve religious institutions with their public chapels. Nevertheless, it must be considered that almost all of the religious institutions established there contribute little to the public service of the faithful. Indeed, in the colleges and boarding schools, Mass is celebrated only on Sundays and feast days for the boys or girls, respectively, and for the religious and clerics assigned to them, and in the five public churches of the nuns located there, although Mass is celebrated publicly, few faithful attend due to the narrowness of the churches." Having carefully considered all of these matters, the aforementioned Bishop believes that the petitioner's request deserves serious consideration."

Disputatio Synoptica: GRACE SEEMS TO BE DENIED. Benedict XIV, in Constitutiones, Declarasti Nobis, after citing a canon of the Council of Nema-

[*Latin ed. p. 123*]

BARCHINONEN. There are 123 canons, where these words are read: "If all the parishioners cannot come together for one Mass at the same time, because they live in different places, far from the church, and there are not two priests in the church, and, after the first Mass has been said, parishioners who arrive later request another Mass to be said for them, then the priest can celebrate another Mass." Then, it is noted: "These words

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must be carefully observed, especially when there is only one priest; nor are there two priests in the church. From these, it is clearly evident that it is not permitted for a parish priest, if another priest is present, to perform two sacred rites on feast days, so that the people may participate in the sacrifice of the Mass... or if there is only one church in which the Mass is celebrated, and to which the entire population cannot come together at the same time." Furthermore, it is known from chapters *Consuluisti* and those chapters *Te Referente De celebrat, mis.* that priests can offer the sacrifice of the Mass only once on the same day, unless necessity dictates otherwise. And although the *Glossa* adds the cause of "honesty or utility" to the cause of necessity, nevertheless, the doctrine of Fagnani seems more suitable to be retained in practice, who, in chapter *In Ordinando De Sim.* concerning the permission to celebrate twice, states: "This must only be done out of great necessity and with great caution." We know that the Sacred Congregation of Rites has consistently adhered to this prudent discipline, as evidenced by *Derthusien*, August 20, 1768; *Niciensis*, November 27, 1790, and more recently by *Arboreen*, August 23, 1872; *Avenionen*, April 22, 1882; *Ortonen*, March 29, 1890. These matters will become clearer if the Most Reverend Fathers will deign to recall the case proposed in Venice on February 28, 1891, in which the parish economist of the island of Murano had requested permission to celebrate a second Mass for a fourth Mass, although he stated that "on feast days, it is necessary to provide the Holy Mass for more than seven thousand people," and the commendation of the Most Reverend Patriarch was added; it was replied: "Considering all things, it does not seem expedient." In the case, however, when four Masses are already celebrated on feast days in the parish church, in addition to the twelve that are celebrated in the public chapels of religious institutions, which, although more convenient for the religious families at the respective hours,

[*Latin ed. p. 124*]

124. It would be more fitting to speak of convenience rather than necessity, and therefore, the reasons for granting an indulgence here are of little consequence. THE INDULGENCE SEEMS UNNECESSARY. Nevertheless, it could be observed that, in ancient times, due to the abundance of people and the lack of priests, it was customary for several Masses to be celebrated by the same priest on the same day, and that this custom remained intact in subsequent centuries, with the Church permitting it, even though the number of priests had increased. Cardinal Bona, *Rerum Liturgicarum*, Book 1, Chapter 15, paragraphs 5 and following; Benedict XIV, *De Synodo Dioecesana*, Book 5, Chapter 8, paragraph 8. However, as time passed, some, with the sole aim of collecting alms, would more frequently offer sacrifices in a single day. The Roman Pontiffs, Leo IV first, then Innocent III in the aforementioned passage, and Honorius III in the aforementioned

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passage, in order to curb these abuses, forbade the repetition of Mass with a strict law. Therefore, it may perhaps be permissible to infer that such a law can be understood with a more lenient interpretation, provided that all suspicion of avarice and the danger of abuses are removed. And although the permission to say two Masses was restricted by Benedict XIV for a specific necessity of the people, the Doctors nevertheless admit that there are equivalent reasons in which the same dispensation could be applied, and the Holy See has ratified this opinion in its practice on more than one occasion. We know that the Church, when a large part of the faithful were deprived of the Mass sacrifice, has sometimes added reasons to grant the faculty of saying two Masses. Thus, for example, the Sacred Congregation for the Propagation of the Faith, in the year 1832, informed the Bishop of Nicopolis in Bulgaria: "The Apostolic See grants this faculty for the spiritual good of the faithful, so that all may be able to fulfill the ecclesiastical precept." See also Pasqualigo, *De Miss. Sacrif.*, question 844, paragraph 1. Therefore, in the case of the inhabitants of the parish of Saints Gervasius and Protasius, without a requested dispensation, they not only cannot easily fulfill the precept of hearing Mass, but, according to the testimony of the Bishop, the faithful "could not fulfill the precept of Mass due to the narrowness of the church; (and elsewhere) many are unable to attend..."

[*Latin ed. p. 125*]

BARCELONA. 125. In the Basilica of the Most Blessed Virgin, at that hour (midday), some people arrive and do not attend Mass. It would be necessary to consider here the reasons why this might not be detrimental to the attainment of grace. Even more so, "in this present time of religious indifference, as the Bishop writes, it is necessary to make it easier to fulfill the precepts of the Church." Indeed, the Sacred Congregation also considered it somewhat advisable to soften the rigor of the law in this matter, as can be deduced from the documents from Mexico, December 20, 1879; from Gratiapolis, May 10, 1884; and from Salerno, May 4, 1889. Finally, in each case, it must be considered that grace is earnestly requested, both by the Bishop, who recognizes the needs of the people above all others, and to whom, therefore, the Sacred Congregation rightly gives much weight in these matters. Furthermore, it does not impede that there are already four Masses offered in the parish, and there are also twelve public oratories there; provided that it is a parish whose population reaches from 10,000 to 14,000, and therefore it would be quite impossible for everyone to attend the four Masses in the small church, which can barely hold a thousand faithful, and in the very narrow chapels of the religious, in which, as the Bishop reports, "few faithful attend, due to the narrowness of the temples." With these considerations, the question arose as to what should be answered in prayer.

RESOLUTION. The Sacred Congregation, after discussing the matter on

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February 23, 1895, decided to respond: Regarding the possibility of offering a Mass for only one Mass, for a period of five years, at the discretion and conscience of the Bishop.

ROME. DOUBT REGARDING THE APPLICATION OF MASSES. August 27, 1895. Through summary petitions.

COMPENDIUM OF THE CASE. When the Reverend Father Johannes Hofmann, Apostolic Vicar of the place of Chan-Si Meridionalis in the Empire of China, presented the following doubt to the Sacred Congregation of Propaganda Fide: "Whether a priest celebrating Mass at a funeral, without receiving a stipend, should offer it for the deceased himself, or rather for others?"

[*Latin ed. p. 126*]

126 In ROMA, those who petition and offer alms may be able to have a Mass applied; the same Sacred Congregation referred the question to the Congregation for a suitable solution. From the statement of the doubt, it is clear that the question is whether a parish priest, missionary, or any other priest, when asked to celebrate Mass during funeral rites, may also receive alms, and whether inquiry should be made as to the application of the Mass, or whether this priest, by agreeing to the request and celebrating Mass, is also obligated to offer a sacrifice for the deceased, or rather, for another who offers alms, or whether he may apply the Mass for his own particular intention.

A SYNOPTIC DISCUSSION: THE APPLICATION OF THE MASS SEEMS APPROPRIATE. The reason for doubting arises from the Roman Ritual itself. In the section entitled "Concerning Funerals," it states: "That which is the most ancient custom should be retained as much as possible, that Masses be celebrated for the deceased in his presence, before he is given over to burial." It is clear that the intention of this prescription is that the Mass, celebrated in the presence of the body, should be applied for the deceased; indeed, the rubric states "be celebrated for him." This is taught elsewhere by the very nature of the Rite, for the Church does not desire the pomp of the celebration of Mass, but rather, plainly, for the spiritual benefit of the deceased, for the satisfaction of his particular sins. I say "particular," because if the Church were only concerned with the general fruit derived from any Mass from living and deceased faithful, it would be quite superfluous to insist that Masses be celebrated in the presence of the body; for the pomp and solemnity would be increased, but the expiatory fruit would not necessarily be increased. Moreover, the reason for not accepting a stipend is not only to avoid the stain of avarice, but also because in the alms customarily given for the association with the body and the funeral rites, the appropriate compensation for the application of the Mass is conveniently included. For in the case where the Mass accompanies and completes the funeral office, the entire funeral

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office becomes one, directed towards the satisfaction of the deceased, and therefore, one compensation, even if small, in the manner of an alms offered to the priest, sufficiently encompasses the matter.

[*Latin ed. p. 127*]

ROME 127. The Mass does not seem to be applicable. But this is contrary to the truth; in the Sacrifice of the Mass, three benefits are most clearly considered: the first, the most general, of which all the faithful become participants; the second, the special benefit which the priest enjoys; the third, which is said to be the intermediate benefit, which the priest applies to those for whom the Sacrifice is offered: thus, according to the common opinion of the Doctors, as can be seen in Benedict XIV, "De Sacro F. Missae," book III, chapter VIII. For this reason, it does not contradict that a Mass for the repose of the souls, celebrated in black vestments and with the proper rite, can be applied by the priest for the living, as was confirmed by the Holy Congregation of Rites on October 13, 1856, in response to the question: "Is it permissible for priests to use black vestments and to celebrate a Mass for the repose of the souls in order to fulfill the obligation they have undertaken to celebrate for the living?" The answer was: "Affirmatively, provided that those who gave the alms have not prescribed otherwise." Also, from the response of the same Holy Congregation on the Commemoration of All the Faithful Departed, Masses can also be applied for the living. The Sacred Congregation of Indulgences, when asked: "Does the priest fulfill the obligation of celebrating a Mass for the deceased, observing the rite of a feast day or of any Saint, even if it is not a semi-double or double feast?" on April 2, 1840, responded: "Affirmatively." Indeed, the Church, through prayers and the sacred liturgical prayers for all the faithful, implores God in the Sacrifice of the Mass through the ministry of the priest, from which the most general benefit of the Mass is diffused to all Christians; but there remains the intermediate benefit which the priest must apply, either by right or by his own will. Therefore, the celebration of the Mass must be necessarily distinguished from the application of the Mass, by reason of the spiritual benefit, so that one can be obligated to celebrate the Mass, but not to apply it. Therefore, Benedict XIV, in the aforementioned work, book I, chapter 9, teaches that one can bind the priest in a will to celebrate Masses and not to apply them to the founder, or to demand only a certain number of celebrations, not the application of the Masses. From the principles stated above, and more closely related to the question, comes the response given by the Sacred Congregation of the Holy Office on September 1, 1841, to the question of whether the priest is obligated to celebrate a Mass for the bride and groom during the celebration of the marriage: the answer was: "The priest is not obligated to apply the Mass for the bride and groom, unless he receives an alms from them." Nevertheless, the Roman Ritual

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prescribes...

[*Latin ed. p. 128*]

128 ROMA writes, as if it were a part of the nuptial rite, that "The priest celebrates Mass for the bridegroom and bride, as is celebrated in the Roman Missal..." However, the Church obtains its intention simply from the celebration of Mass, in which more fervent prayers are offered for the newlyweds to God, and blessings are implored. Furthermore, in Mass for the dead, the Church, through the ministry of the priest, prays in its own name to obtain for the deceased the fruit of satisfaction, and when the deceased is present in the body, particular supplications are offered for him in the Sacrifice of Mass. However, there seems to be no room for doubt if one considers that the words of the Roman Ritual do not contain a precept that Mass be celebrated for the deceased while his body is present, but simply praise the custom and practice, or "That, as far as possible, the ancient institution may be retained, so that Masses may be celebrated for the deceased, in his presence, before he is given over to burial." With these things noted, the question was raised as to what should be answered regarding prayers.

RESOLUTION. The Sacred Congregation, having considered the matter on April 27, 1895, decided to respond: Negatively to the first part, affirmatively to the second.

FROM WHICH IT IS UNDERSTOOD:

I. That it is one thing to celebrate Mass, and another to apply the Mass.

II. That the priest can apply the fruit of the Mass for those from whom he receives alms, even for the living, even though he is wearing black vestments.

III. And therefore, the priest, in performing funeral rites for the deceased, as well as in the celebration of marriages, is not obligated to apply the Mass for the same deceased or for the newlyweds, unless he receives a stipend for that purpose.

[*Latin ed. p. 129*]

129 ENCYCLICAL LETTER of the Most Holy Pope Leo XLII, Concerning the Most Holy Rosary. It is fitting and proper to celebrate with greater and greater devotion the powerful and most merciful Helper of the Christian people, the Virgin Mother of God, and to implore her with ever-increasing confidence. For the arguments for faith and praise are strengthened by the abundant variety of benefits which, through her, flow more and more abundantly each day, spreading far and wide for the common good. Indeed, such great benefits have not been without the most devoted service of the Catholics: for, as never before, especially in these harsh times for religion, it is seen how the love and devotion towards the most blessed Virgin has

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been aroused and kindled in every order. A splendid testimony to this are the restored and multiplied confraternities throughout her tutelage; the magnificent temples dedicated to her august name; the pilgrimages made with the greatest piety to her sacred temples; the gatherings convened to deliberate on the increase of her glory; and other things of this kind, which of themselves signify the best and most auspicious things for the future. And it is a singular thing, and one that we must remember, that among the many forms of this same piety, the ROSARY OF THE BLESSED VIRGIN, that most excellent form of prayer, is becoming ever more widespread in opinion and custom. We say this, because we, who devote no small part of our efforts to promoting the institution of the Rosary, see how the Heavenly Queen has responded so favorably to our desires: and we trust that she will continue to be so helpful to us, that she may also wish to alleviate the cares and sorrows that the coming days will bring. — But above all, we expect more abundant help from the power of the Rosary for the advancement of the Kingdom of Christ. We have repeatedly declared the plans which we are urging with greater and greater diligence, concerning the reconciliation of nations dissenting from the Church: and we have declared that, together with the profession of faith, the happiness of the outcome must be earnestly sought through prayer and supplication to the Divine Power. We testified to this not long ago, when, during the solemnity of Pentecost, we recommended particular prayers to be offered to the Divine Spirit for that purpose: to which recommendation great zeal was shown everywhere. But, given the gravity of the matter, and with all the constancy of virtue, the exhortation of the Apostle is appropriate: "Persevere in prayer" (1); even more so because (1) Col. IV, 2. Acts, Vol. XXVIII, page OCCXXVII. 9.

[*Latin ed. p. 130*]

150 LETTER. ENCYCLICAL. The very urgency of this petition seems to provide a certain encouragement, as if the good beginnings of our endeavors are thereby stirred. Therefore, it will surely be most useful, and most welcome to Us, Venerable Brothers, if, throughout the coming month, you and your people, through the prayer of the Rosary and the customary devotions, join Us in fervent supplication to the Virgin Mother. Indeed, there are most excellent reasons why We entrust Our plans and intentions to Her protection with such great hope. The mystery of Christ's charity towards Us is also clearly revealed in this, for when He was dying, He wished to leave His Mother, the most blessed Virgin, to the disciple John, saying: "Behold thy son." And in John, as the Church has always understood, Christ designated the person of the human race, especially those who would adhere to Him through faith. In this regard, the most blessed Anselm of Canterbury said: "What, indeed, can be esteemed as more worthy, than that you, Virgin, should be the Mother of those for whom Christ deigns to be Father and Brother?" Therefore, She undertook this singular

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office and the laborious duties associated with it with great magnanimity, under the auspices of those consecrated in the Cenacle. From that time, She wonderfully fostered the early Christians through the sanctity of Her example, the authority of Her counsel, the sweetness of consolation, and the efficacy of Her prayers; truly, She is the Mother of the Church, and the Teacher and Queen of the Apostles, to whom She also imparted divine oracles which She preserved in Her heart. Moreover, it can scarcely be said how much She increased in amplitude and power at that time, when, by divine providence, She was raised to the very height of heavenly glory, which was fitting for the dignity and splendor of Her merits. For from that time onward, She began, by divine decree, to watch over the Church in such a way, and to be so present and helpful to Us, that She, who had been the minister of the human redemption, would also be, in equal measure, the minister of grace derived from that redemption, being granted almost boundless power. Hence, rightly, Christian souls are drawn to Mary, as if by a natural impulse; they confide in Her their plans and actions, their sorrows and joys; and they commend themselves and all their concerns to Her care and goodness, as children to their mother. Hence, rightly, She has been proclaimed throughout every nation and every rite with wide and ever-increasing acclaim: among other things, She is our Lady, our Mediatrix.

[*Latin ed. p. 131*]

EPISCOPAL ENCYCLICAL 131 concerning the whole world (1), which unites all the gifts of God (2). — And since faith is the foundation and head of the divine benefits by which man is perfected above the order of nature for eternity, therefore, a certain secret action is rightly extolled in order to attain and healthily cultivate it, which revealed the Author of faith, and which, because of faith, is blessed with salvation: "No one, O most holy one, is filled with the knowledge of God, except through you; no one is saved, except through you, O Mother of God; no one obtains a gift from mercy, except through you" (3). It is certainly not excessive to affirm that, through her most excellent guidance and help, wisdom and the institutions of the Gospel have spread with such rapid progress throughout the nations, introducing everywhere a new order of justice and peace. This indeed moved the spirit and prayer of the holy Cyril of Alexandria, who spoke to the Virgin in this way: "Through you, the Apostles proclaimed salvation to the nations...; through you, the precious Cross is celebrated and adored throughout the world...; through you, demons are driven away, and man himself is drawn up to heaven; through you, every creature held captive by the error of idols, is converted to the knowledge of truth; through you, faithful men have attained to holy baptism, and churches have been founded everywhere among the nations" (4). — Moreover, as the same venerable doctor affirms (5), that Virgin

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bestowed and maintained the scepter of orthodox faith: which was her constant care, that the Catholic faith should remain firm among the people, and flourish whole and fruitful. There are many things in this, sufficiently known and sometimes declared in wondrous ways. At times, it has been a cause for sorrow that faith has either languished through carelessness or has been attacked by the nefarious plague of errors; then, the benevolent help of the great Virgin has appeared present. Moved and strengthened by her, men of outstanding sanctity and apostolic spirit have arisen, who have repelled the efforts of the wicked, who have restored the hearts of men to the piety of the Christian life, and have inflamed them. One example among many is Dominic Guzman, who diligently worked in both respects, relying on the help of the blessed Rosary, with happy results. It is certainly clear to everyone how much is owed to the same Mother of God by the venerable members of the Church (1) St. Tharasius, oration in present. Deip. (2) In offic, graec, VII dec, ©soroxíov post oden I X . (3) St. Germanus of Constantinople, oration II in dormit. B. M. V. (4) Ibid. (5) 16, contra Nestorium.

[*Latin ed. p. 132*]

132 ENCYCLICAL LETTER from the Fathers and Doctors, who have rendered such outstanding service in defending or illuminating the Catholic truth. For from her, the Seat of Divine Wisdom, they gratefully acknowledge that they have received a wealth of the best counsel; and therefore, not from themselves, but from her, have the evils of errors been overcome. Moreover, both Princes and Roman Pontiffs, guardians and defenders of the faith, in wars and in the conduct of solemn affairs, have invoked the name of the Divine Mother, and have never failed to find her powerful and favorable. — Therefore, the Church and the Fathers congratulate Mary, not less sincerely than splendidly: Hail, O ever-speaking mouth of the Apostles, firm foundation of the Faith, unwavering bulwark of the Church (1); Hail, through whom we are described as citizens of one, holy, Catholic, and Apostolic Church (2); Hail, fountain flowing with divinity, from which the streams of divine wisdom, with the purest and clearest orthodox waves, dispel the ranks of errors (3); Rejoice, for you alone have destroyed all heresies throughout the world (4). These things, which have been and are a great part of the Virgin's influence in the course of events, in battles, and in the triumphs of the Catholic faith, make her divine counsel all the more illustrious, and ought to raise great hope in all for those things which are now in common prayers. — We must trust in Mary, we must pray to Mary! That the Christian nations may have one profession of faith, that one necessity of perfect charity may unite wills, this new and desired glory of religion, she certainly will be able to bring to fruition through her power. But what does she not desire to accomplish, so that the nations, of which the most numerous union was commended by her Divine Son with the

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utmost affection, and which He Himself has called to the same inheritance of salvation through one baptism, at a tremendous price, may all strive together in her admirable light? What does she not desire to bestow, both for the sake of the Church, the Bride of Christ, which is accustomed to labor diligently in this matter for a long time, and for the sake of perfecting the good of unity in the Christian family, which is the fruit of her motherhood? — The prospect of this event seems to be confirmed by the opinion and confidence that is growing in the hearts of the pious, namely, that Mary will be a blessed bond, (1) From the Greek hymn. (2) St. John Damascene, oration on the anniversary of the birth of the Mother of God, no. 9. (3) St. Germanus of Constantinople, oration on the Presentation of the Theotokos, no. 14. (4) In the Office of the B.V.M.

[*Latin ed. p. 133*]

EPISCOPAL ENCYCLICAL 133. With firmness and gentleness, let all those, wherever they may be, who love Christ, become one people, obedient to "His Vicar on earth, the Roman Pontiff, as to a common Father." This is the place to which the mind readily turns, following the traditions of the Church, to the most noble examples of the ancient unity, and where it dwells with pleasure in the memory of the great Council of Ephesus. For there, indeed, the full agreement of faith and the equal sharing of the sacraments, which held together the East and the West at that time, shone forth with a singular and steadfast glory; for there, the Fathers, legitimately establishing the dogma, declared the Holy Virgin to be the Mother of God, and the announcement of this fact, coming from the most devout nation, filled the entire Christian world with one and the same, most celebrated joy.

Therefore, just as there are so many reasons for trusting in the powerful and benevolent Virgin, so many spurs should be given to the zeal that we encourage in Catholics to invoke her. Let those who are with us consider how honorable and how profitable this is for themselves, and how pleasing and welcome it will certainly be to the same Virgin. For, as they are united in faith, so they declare that they wish to contribute greatly to the benefit of this unity, and that they wish to safeguard it with all their might. And they cannot demonstrate a more excellent fraternal spirit towards those who are separated from us, than if they earnestly help them to return to the one and greatest good. This truly Christian feeling of fraternity, always present in the Church, has always sought its most excellent virtue from the Virgin, as from the best advocate for peace and unity. The holy Germanus of Constantinople prayed to her with these words: "Remember, O Virgin, those Christians who are your servants; commend the prayers of all, help the hope of all; you strengthen faith, you unite the churches into one" (1). Thus, even now, is the plea of the Greeks to her: "O most pure one, to whom it has been granted to approach your Son without any fear of rejection, pray

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to him from your heart, O most holy one, that he may grant peace to the world and inspire the same peace in all the churches: and may all glorify you" (2).

Furthermore, there is a particular reason why Mary grants indulgences to those nations who, in their prayers, seek her favor: namely, the outstanding merits that they themselves have earned, especially those of the Orient. Much is certainly due to her for the propagation and increase of her veneration:

(1) In the history of the Dormition of the Virgin.

(2) Menaion, May 5th, Kontakion after the 9th ode of the Sticherion of St. Irene, Vespers.

[*Latin ed. p. 134*]

134 ENCYCLICAL LETTER to those who uphold and defend her memorable dignity, with the greatest authority, whether by word or deed; praised for their zeal and eloquence; beloved daughters of God, imitating the most chaste Virgin in their example, and practicing generosity; who have raised temples and basilicas with royal splendor. – It is fitting to add something that is not far from the truth, and which glorifies the most holy Virgin. No one is ignorant that her august images, from the East, have been brought to the West, and especially to Italy and to this City, at various times; and that the Fathers have received them with the utmost reverence and have venerated them magnificently, and that their descendants strive to honor them with the utmost piety. In this act, one can discern a certain feeling and a desire to acknowledge the merits of a most devoted Mother. It seems that these images still exist among us, as witnesses of the times, when the Christian family everywhere was completely united, and as precious heirlooms of a common inheritance: therefore, by their very appearance, we are invited, as if the Virgin herself were urging us, to remember those whom the Catholic Church lovingly recalls to the joy and harmony of its original unity. It is therefore a great safeguard of Christian unity, divinely offered through Mary. Indeed, although this can be achieved in many ways through prayer, we believe that the Rosary is the best and most effective means. We have already pointed out that there is also a very important benefit in this, namely that the Christian man may readily and easily preserve his faith and protect himself from the dangers of ignorance and error: this is made clear by the very origins of the Rosary. Indeed, this faith, whether exercised through reciting prayers aloud, or, more especially, through contemplating the mysteries in the mind, is clearly closely related to Mary. For whenever we rightly recite the sacred Rosary before her, we repeatedly recall the admirable work of our salvation, so that, as if it were a present reality, we may contemplate those things, through which she, at the same time, became the Mother of God and our Mother. The greatness of the dignity of both, and the fruits

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of the ministry of both, are clearly seen if one considers Mary religiously, associating with the Son in joy, sorrow, and glory. From this, it follows that the soul should burn with a feeling of love towards her, and, having cast aside all earthly things, should strive with a worthy purpose. (1) St. Cyril, *Alexandrinus*, *De Fide ad Pulcheriam et Sorores Reginas*.

[*Latin ed. p. 135*]

ENCYCLICAL LETTER 135, demonstrating the great benefits and graces of this Mother. However, since she cannot but be most pleasantly affected by the frequent and faithful remembrance of these mysteries, and since, being the most excellent of all mothers in mercy, she cannot fail to be moved, we have said that the prayer of the Rosary is particularly opportune, so that we may pray for the cause of our brothers who are divided before her. This pertains properly to her office of spiritual motherhood. For those who are Christ's, Mary did not give birth to them, nor could she, except in one faith and one love: for is Christ divided? (1) And we must all live the life of Christ together, so that we may bear fruit to God in one and the same body (2). Therefore, those from whom this calamity and the misfortunes of things have been taken away, ought to be born again by the same Mother, who has been increased by God with perpetual fecundity of holy offspring, so that they may, in a certain way, give birth to Christ again. This is plainly what she most ardently desires; and, having been given the most acceptable prayers by us, she will abundantly obtain for them the help of the vivifying Spirit. May those who are moved by the merciful Mother's will not refuse, but, considering their own salvation, may they hear most sweetly the invitation: "My little children, of whom I am in labour again, until Christ be formed in you." (3)

Having thus seen the power of the Rosary, some of our predecessors have turned their attention to certain special concerns, so that it might be spread throughout the Eastern nations. First, Pope Eugene IV, with the constitution *Advesperascente*, dated in the year 1439, then Pope Innocent XII and Pope Clement XI; by whose authority, also, ample privileges were granted to the Order of Preachers, for this purpose. And the desired fruits were not lacking. Members of that same Order, striving with diligence, have testified to the multiple and clear benefits; although, with the passage of time and the adversities of the times, progress has been somewhat hindered. However, in this present age, the same zeal for the cultivation of the Rosary, which we have praised as having been aroused at the beginning, has likewise stirred the hearts of many in those regions. And we hope that this will be useful to the extent that it corresponds to our intentions, and to the fulfillment of our desires.

Connected with this hope is a certain joyful fact, equally touching the East and the West, and perfectly in harmony with the same desires. We look forward to the realization of the plan, Venerable Brothers, which began in

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the noble Eucharistic Convent, in Jerusalem, namely, the construction of a temple in honor of the most holy Queen of the Rosary.

(1) 1 Corinthians 1:13.

(2) Romans 7:4.

(3) Galatians 4:19.

[*Latin ed. p. 136*]

136 ENCYCLICAL LETTER. And this, in Achaja, not far from those places where, once upon a time, the name of Christ shone forth, under her protection. For, as we have learned from the Council which, with our approval, was established to care for and promote this work, almost all of you, when asked, have diligently contributed a fitting sum; and you have also promised that you will continue to do so until the work is completed. Therefore, it is now sufficient to proceed with the preparations that are appropriate to the magnitude of this undertaking: and We have granted the authority for the auspicious cornerstone of the temple to be laid with solemn ceremonies. The temple will stand, a monument to the Christian people, of the eternal grace of the Helper and Celestial Mother: who will be invoked there, both in Latin and Greek, constantly, that she may deign to bestow new blessings upon us, adding to those already received. Now, Venerable Brothers, from this place, our exhortation returns to you. Come, pastors and flocks, all to the protection of the great Virgin, especially in the coming month, and seek her with full confidence. Let us not cease to call upon her publicly and privately, with praise, prayer, and vows, and let us beseech the Mother of God and our own: Show yourself to be the Mother! May her maternal clemency preserve her entire family from all danger, keeping them safe, and may she lead them to the prosperity of the true faith, especially by establishing it firmly in holy unity. May she look with kindness upon Catholics of every nation; and may she make those who are bound together by the bonds of charity more eager and more steadfast in upholding the dignity of the religion, within which are contained the greatest blessings for the state. And may the most benign Virgin look upon those who are separated, great and illustrious nations, with a memory of noble spirits and Christian service: may she reconcile the best desires within them, and, having reconciled them, may she bring their fulfillment about. May this also be true for those who are separated from the East, that their devotion to her may be as abundant as they profess, and that their actions may be as numerous in her glory and in the illustrious deeds of their ancestors. And may this also be true for those who are separated from the West, that the memory of the most beneficent patronage may be effective, by which she has, for many ages, shown and bestowed exceptional piety upon all orders. May the united voice of supplication of all the Catholic peoples, and may Our own voice, reach the utmost limits of the spirit, crying out: Show yourself to be the

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Mother! In the meantime, as a witness to the divine benefits and to the benevolence of Our own heart, We impart to each of you, to the clergy and to the people of your region, Our Apostolic blessing, most cordially. Given at Rome, at Saint Peter's, on the fifth day of September, in the year 1837, in the eighteenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 137*]

137 FROM THE HOLY CONGREGATION FOR THE DISCRIMINATION OF HERESIES, concerning matters of law, the Procurators, on the 27th of April, 1895, Session 13, Chapter 2, concerning the Reform of the Church of Saint Helen, Empress, in the town of Birchircara, in the diocese of Melevitana, at the request of Philip Borg, the Parish Priest of this Church, in the year 1630, by Urban VIII, the Supreme Pontiff, after the perpetual suppression and extinction of the Parish Church, was erected into a Collegiate Church, with thirteen benefices, namely, a prebend and twelve canonries, to which was granted a privilege of all kinds of exemption from the local Ordinary. For the care of souls, a perpetual Vicariate was instituted in the Collegiate Church, distinct from the canonical benefices, in which a secular priest was to be instituted as the perpetual Vicar of both the Parish and Collegiate Churches. The execution of these documents encountered considerable difficulties, until, after various disputes, the Holy Roman Rota, by a decision of the 9th of December, 1637, declared that the Pontifical Constitution concerning the exemption from the local Ordinary was not to be enforced. Thus established, the Collegiate Church, other disputes arose between the Vicar and the canons, concerning the administration of the Church and the rights of precedence; to remove these contentions, as narrated by Benedict XIV in the Bull *In Supremo Apostolatus*, a convention was initiated in the year 1687, with the Bishop as mediator, whereby the Vicar's benefice was raised to the dignity of Archpriest, and he was co-opted into the Chapter, with precedence granted over the simple canons. Innocent XII, by a *motu proprio*, confirmed this agreement, and it thus had full force. SUMMARY OF THE FACTS.

[*Latin ed. p. 138*]

138. MELEVITAN A. Nevertheless, after disputes arose between the Chapter and the Archpriest concerning the governance of said Church, as the aforementioned Pontiff states in the aforementioned Bull, both parties agreed that everything pertaining to the care of souls and the administration of the Sacraments, and the goods belonging to the aforementioned Archpriest, should belong to the Archpriest; however, the economic governance of said Collegiate Church should be assigned, for one half to the Archpriest and for the other half to the aforementioned Chapter and Canons, which agreement has been observed until now, but has never been confirmed by the Apostolic See. However, since the

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disputes did not cease between the Canons and the Archpriest, the same Benedict XIV, in the aforementioned Bull, in order to completely eliminate all disputes and controversies, suppressed the Archpriestate, "so that henceforth the care of the souls of the parishioners of said Collegiate Church should be annexed to the aforementioned Praepositura, along with all emoluments and distributions... with which both the Archpriest and the Praepositus of said Collegiate Church had previously enjoyed and possessed, the firm remaining with the Praepositus of said Collegiate Church, for the time being, with half of the economic governance and administration of all things pertaining to said Collegiate Church, which previously the Archpriest of the same Collegiate Church enjoyed." It should be noted that the economic governance of the Church, which is now being disputed, seems, for the first time, to be debated between the Chapter and the Archbishop, as to whether this governance includes only the administration of the goods of the Chapter's Mass, or also the revenues and income, both of the Church Fabric, and of the Pious Societies, Chapels, Altar, and the lions present there, and any kind of donations. For the Archbishop contends that, except for the Chapter's Mass, the administration of all other revenues belongs to him; therefore, when the Chapter elected, on November 14, 1890, a procurator for the goods of the Brotherhood of the B. V. M. de Monte Carmelo in the Collegiate.

[*Latin ed. p. 139*]

MELELEANA 139. Postquam Ecclesia erecta est, ipse Episcopus, die 26 eiusdem mensis et anni, alium Procuratorem elegit. Praeterea, Procuratori Lampadarum, seu Fabricae, a Capitulo electo, Episcopus, sine consultatione Praepositi et Canonicorum, permisit in emphyteusim dare fundum ad praedictam Ecclesiam spectantem. Haec duo acta, quia iura propria Canonicorum laedunt, ad Sacram Congregationem Consilii (S. C. C.) iudicium solemnem trahunt, adversus Episcopum, liberam administrationem, quoad hos reditus, vindicantes. Episcopus vero, securus quiescit in proprii iuris usu, et exposcit ut repellantur petitiones canonicorum.

Disceptatio Synoptica.

DEFENSIO CAPITULI.

Praemonitum est, patronos convenisse in duo concinnanda dubia, quae claritatis gratia iuvat referre:

1. An ius eligendi et nominandi procuratores pro administratione bonorum Ecclesiae Collegiatae competat Capitulo eiusdem Ecclesiae Collegiatae, prout in casu? - Et quoad primum dubium, affirmative.

2. An eisdem procuratoribus competat ius affigens edicta ad ineundas contractus emphuteuticos, in casu?

Et quoad primum dubium, Capituli Advocatus ante omnia definit de

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quibus administrandis bonis agatur; ne ab ipsa nimis generica enunciatione aequivocandi sumatur occasio. Nulla quidem erit quaestio de bonis ad mensam capitularem spectantibus. Praeposito et Canonicis penitus assentitur Archiepiscopus, ea per se posse administrare, et ad hoc procuratores deputare. Sed quaecumque alia bona, sive dotalia ipsius Ecclesiae, sive legata, aut Confraternitatum ibidem erectarum proventus, aut alio quovis titulo eidem Ecclesiae affecta, Archiepiscopus obstat quin ea per Capitulum et procuratores ab eo delectos administrentur.

Quia, Episcopus sibi arrogat pacificam possessionem et perenne exercitium, notat patronus, quod non sit Ordinarius in ea manutenendus, cum eamdem possessionem, idemque possint ex adverso Praepositus et Canonici exercitium pro-

[*Latin ed. p. 140*]

140. The Melevitana estate is bare. Therefore, he argues that both parties should present their title or claim, so that such a matter may be sustained. And since the Archbishops, the Prefect, and the Canons have asserted the exercise of their own jurisdiction, strengthened by apostolic sanctions and never abandoned by custom, it is clear that the cause is not to be restrained by a simple possessory claim, but also to be considered according to what is handed down by De Luca, *De Beneficiis*, p. 11, dist. 35, n. 3, who teaches that the style of the Curia is "that the concurring claim and the merits of the principal matter should be summarized for consideration, so that it may be easier to grant the same possession to him to whom also a good right belongs, according to the practice attempted in the neighboring courts by the decree of the Rota, dec. 102, p. 10, rec., and in others." Indeed, the advocate argues that the Bishop's intention is to oppose the common law, because Bishops are not, by common law, administrators of the churches, benefices, or any goods of their diocese, but are guardians, according to the decrees of the Holy Council of Trent (Session II, chap. 9, *de Ref.*), which established the Ordinary of the place as the examiner of accounts, which such administrators must render to him each year. "Both ecclesiastical and lay administrators of any church, even a cathedral, hospital, or confraternity, are bound each year to render an account of their administration to the Ordinary." But, the advocate argues, this does not belong to the Bishop of Melevitana by common law, much less was a special indult granted. For, indeed, he has not presented any such title, but has based his claim on a simple fact to maintain his asserted possession. He does, in truth, mention letters from the Sacred Congregation of Bishops and Regulars, dated March 10 and 13, 1645; but, as far as they exist, they refer to the administration of the Capitular Fund. However, according to the advocate, the condition of the Chapter is much better, as it is secured both by apostolic sanctions and by the support of the recognition of the Bishops themselves. This is not a matter of exemption from the Ordinary, as is the

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case according to the...

[*Latin ed. p. 141*]

In MELEVITANA, the erection of the Collegiate Church is considered to have been annulled. This matter concerns whether, even with the long-standing practice of the Chapter in selecting and appointing administrators for the management of the Church's assets, apart from the so-called Chapter Table, there exists a title that strengthens this practice. And here it is noted that, although disagreements regarding the temporal administration of the Collegiate Church have been very frequent almost from the beginning, these have never arisen between the Archbishop and the Chapter. Indeed, it is known that the Melitan bishops, predecessors, were constantly concerned, not with seizing such a right for themselves, but with resolving disputes between the Chapter and other parties. Based on the above, the advocate establishes two conclusions: one of fact, the other of law. The conclusion of fact is that, among the numerous and long-standing controversies regarding the temporal administration of the Collegiate Church of Saint Helen and the election of administrators for that administration, there has never been a dispute between the Bishop and the parties involved; nor has any complaint ever been made by the Bishops against the Chapter. And the conclusion of law is that the aforementioned Letters of Pope Benedict XIV, by which these efforts were annulled, have established and must establish a position against anyone who dares to disturb the Chapter in the exercise of the economic administration of all assets pertaining to the aforementioned Collegiate Church, through the means of those Letters, by requiring the Prior and the Chapter canons to jointly hold three sessions. Such conclusions are confirmed by the nature of the controversies to which the Pontifical rescript put an end. If the Bishop (Canaves) attempted to restrain such disturbances according to the convention of 1716; if, indeed, Pope Benedict XIV sought to eradicate the root of these disturbances by understanding the Bishop (Alpheran), he abolished the Archpriestship and gave its functions to the Prior, so that, together with the canons, he would administer the entire economic affairs of the Church; if these Apostolic Letters in Melevitan—

[*Latin ed. p. 142*]

142. The Mele pitan party demanded execution without any restriction or exception; the accuser argues that, according to the defense, it is a stone today moved to revive ancient phantasms, to tear down Apostolic Rescripts, to retract the judgment of the ancients. Then, the accuser also points out the presence of recognitions from the Chapter's legal representatives on the part of the Bishops. And first, he recounts what Bishop Rull accomplished, later encountering newly arisen objections. These events are drawn from the record of the transaction of the year 1762. Therefore, it was established

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by the transaction that elections should be held by the Chapter, as before, and that they should be confirmed by the Bishops, the advocate concludes. The advocate strengthens this argument by presenting confirmation formulas, which are usually worded as follows: "We, with our ordinary authority, confirm the election concerning which we have been petitioned, ordering that prayers be recorded, along with this present rescript, etc." Furthermore, the advocate proves that only the confirmation of the procurators was reserved to the Bishops, recalling elections whose authenticity is attested by authentic records in the Chapter's archives, where one can see, not in a summary and general way, but with the year, month, day, and hour noted, the electors and the elected; each with their respective offices; and the amount of time assigned to each for the exercise of those offices; and this from the year 1756 to the year 1892. In all of these, the convocation of the Chapter precedes, and the number of participating chapter members is designated, along with the place of the election, the proposal of those to be elected, the votes obtained, acceptance, and refusal are declared. And procurators are elected for the Lampadis (that is, the Fabric), for the material works of the church, for the census of sodalities and confraternities, for the altar linens, and for other specific revenues to be administered: so that everything appears to be carried out properly and solemnly, without any intervention by the Bishop. Moreover, the advocate continues, there is a case in which an election was held in favor of the Bishop, and that election was confirmed by the Bishop on December 10, 1791. And to the petition of the Prefect and Canons for the confirmation of the election, he responded on the 19th of the same month.

[*Latin ed. p. 143*]

MELELEANA 143. The Bishop writes: "We confirm and approve the election concerning which you wrote in your petitions, by the authority of the Ordinary, ordering that the petitions, together with this present Rescript, be recorded in the acts, etc." Since the Bishop specifically refers to the election of the procurator of the confraternity of the B. V. Mary of Mount Carmel, the Orator adds a special observation concerning the election of such a procurator. However, the patron, according to the authentic document of the deliberations of the Chapter, proves that such a custom has existed and does exist. To make this clearer, the Chapter added a special index of the particular elections for that confraternity. Finally, the patron concludes from the acts of the Chapter, where matters concerning the works for repairing the church and chapels are discussed; concerning the repairing and decorating of buildings and altars, the placing of paintings and statues, and their proper arrangement; concerning the founding of confraternities and the provision for their administration; concerning the care of the satisfaction of syndics and the celebration of votive Masses; concerning the granting, postponement, or denial of reductions of Masses;

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concerning the expansion or renovation of buildings; concerning the granting of leases and the expulsion of tenants, that the economic administration belongs to the Chapter. Afterwards, the patron, proceeding to the second point of the question: "Whether the same procurators have the right to affix edicts for entering into emphyteutic contracts," notes that emphyteutic contracts are further considered to be equivalent to alienation of property, and that no one is ignorant of this. Therefore, they cannot be completed without the Apostolic approval, and without all the formalities that precede or accompany the granting of the Apostolic approval: among which are included investigations, from which it can be proven that the contract is for the benefit of the Church, so that it may be granted in the best possible way. In order that such precautions be taken, the conscience of those who are interested in entering into such contracts is burdened: and in this case, the conscience of the Chapter is burdened. Therefore, the Orator considers it superfluous to inquire how far the power of the procurators extends. It extends as far as they receive a mandate from the Chapter.

[*Latin ed. p. 144*]

144. Concerning the matter which is the subject of the present inquiry, I have already narrated that the Prefect and the Canons were aggrieved, because the Reverend Ignatius Michalef, their procurator at Lampadi, that is, the Fabric, granted a leasehold (emphyteusis) of property, by the authority of the Bishop, to certain individuals, without their consultation and in direct contradiction to their wishes. The advocate notes that the Prefect and the Canons allege that the aforementioned procurator absolved himself of the entire matter before the Bishop, against the vote of the Chapter; a fact which is confirmed by past events. Although the Bishop protested that he had acted lawfully in this matter, the aforementioned Ordinary did everything in his power to prevent any questioning of the posting of edicts and the deposition of offerings before the Chapter. Therefore, the advocate believes that the present inquiry should be answered with the statement that nothing new is to be introduced.

DEFENSE OF THE ORDINARY. The advocate contends that the right to nominate and select procurators for the administration of the goods of the Collegiate Church belongs solely to the Bishop, because, as Barbosa teaches in his treatise on the office and power of the Bishop, it pertains to the Ordinary jurisdiction of the Bishop to have under his authority, firstly, all and each person in his Diocese, whatever their rank or quality, and secondly, all churches and parishes, monasteries and hospitals under his power and governance, unless something else occurs by reason of a privilege of exemption, chapter 10. Furthermore, he must have under his governance and control all ecclesiastical property and goods, and all the rights of churches, which he must administer, chapter 16, question 7, and he must dispense with and regulate ecclesiastical affairs, or have care and provision for all

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of them, "regarding those things which the care and office of the Bishop demand, a summary, number 45, 46, 47, 60." Moreover, the advocate argues that the church of Birchircara is in no way exempt from the jurisdiction of the Bishop; it is not, therefore, an Abbey, or a Church, or a Collegiate Church of Nullius. Indeed, there is no decree of the Supreme Pontiff which exempts the Church and the Canons of Birchircara from the jurisdiction of the Bishop. Therefore, he says, it is futile for the opponents to appeal to the Constitution of Urban VIII, for this was never ordered for execution. If, however, the opponents argue for an exemption, the advocate contends, the Supreme Pontiff...

[*Latin ed. p. 145*]

The Most Reverend Father has not, in fact, granted [exemption], nor could the Ordinary of the place grant it; for Bishops, according to the common opinion of Doctors, neither can renounce their own rights, nor can they grant an exemption without the authority of the Supreme Pontiff; as Barbosa proves, "Exemption, he says, cannot be granted to Religious by Bishops and lower Prelates with full right from the power of the Bishops, but only by the Roman Pontiff; because they say that Bishops cannot relinquish their entire jurisdiction over any Church, and visitation, and all other pastoral rights, from themselves," from chapter "Concerning the Venerable," concerning "censibus," concerning "officiis et potestate Episcoporum," part 3, allegation 89, number 3. And indeed, the Advocate continues, there is no exemption. For the Urbanian Constitution was never demanded for execution by the Inquisitor to whom it had been entrusted for execution; and therefore, after a dispute raised by the Inquisitor himself, the Chapter of the Cathedral, and the Grand Master of the Militant Order, before the supreme tribunal of the Rota, it was decided that there was no place for the execution of the Urbanian Constitution with regard to exemption from episcopal jurisdiction. Then the advocate appeals to the custom and uninterrupted observance in the same Church of Birchircarae, with no one contradicting. Furthermore, the best observance is said to be the foundation of the law, according to Lotterio, "De re benef.," book 2, question 11, number 125. Cardinal De Luca, "De iure pat.," discussion 60, number 9, and claims the greatest authority for himself, if, as in this case, it is close to and contemporaneous with the foundation itself, according to Pitonio, "Disceptationes eccl.," discussion 159, number 44, § "Habemus." Indeed, it is known that custom has the force of law; therefore, both rightly claim to be observed. With these things established, the Advocate observes that it is clear from the documents that the Bishops have always exercised the right to nominate and choose procurators for the administration of the goods pertaining to the collegiate Church, not only during the course of the pastoral visitation, but also outside of the visitation itself, because

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administrators or procurators have always been elected.

[*Latin ed. p. 146*]

146. The representatives of Melevitan argue in favor of the goods belonging to the venerable Lampadum, the altar, and the sodalities established in the collegiate church, against those who claim that the Chapter has ever opposed them. To strengthen his argument, the Patron presents a record of elections made by the Bishops at the time for the administration of the goods dependent on said collegiate church up to the year 1889, in which it is written: "Considering the resignation of the Reverend Canon Ignatius Micaleff from the office of procurator of the sodality of the Most Holy Sacrament, established in the parish church and collegiate church of Birchircara, the Archbishop, as Bishop, appointed John Farrugia, the secretary of the Grand Curia, etc." Then, he presents another document from the records of the visitation of the year 1646, by which it is proven that the Chapter has the right to elect procurators for the administration of the goods of the Chapter's table, with the proviso that it depends on the Bishop at the time. Then, the Advocate, based on the very confession of his opponents, believes that he strengthens his intention. For the archpriest and canons of the collegiate church of Birchircara presented supplications to the Vicario Capitulari of Melevitan, so that in the revision of the accounts presented by the procurators of the Lampadum, the altar, and the sodalities, established in the collegiate church, in order to avoid expenses, the appointed deputies and the archpriest might be used. And the Ordinary of that time responded, "Let it be done, as requested, to our satisfaction." The Advocate intends to prove that the procurators of the collegiate church have always depended on the moderator of the diocese of Melevitan, based on other supplication letters from recent times. Indeed, the parish priest of Birchircara, in the year 1843, presented supplications to the Bishop of Melevitan, so that he would deign to grant the faculty to sell donations, in order to provide the funds for the acquisition of hangings (tappezzerie). These supplications were repeated several times, and a record of the donors was presented by a knowledgeable person, so that the Bishop responded, "Let it be done, as reported." If, however, the Advocate says, by an absurd hypothesis, the collegiate church were granted the power to nominate and elect procurators, it would be the end of the goods pertaining to the Church in the diocese of Melevitan.

[*Latin ed. p. 147*]

MELEVITANA 147. Finally, the advocate, addressing the second doubt, argues that the right to issue mandates pertains solely to the Bishop, so that edicts may be attached to contracts of *emphyteusis*; indeed, just as, according to the dictates of common law, the right to nominate and choose the administrators of the Church's goods belongs solely to the Bishop, by

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virtue of established observance and custom; so too, the right to issue mandates, so that edicts are attached for the granting of *emphyteusis*, belongs solely to the Bishop. According to the advocate, the same observance and custom prevail, because from the record of the concessions of *emphyteusis*, it is clear that the Collegiate Church granted the *emphyteusis* for the enclosure, as they say, to the ministry of the episcopal curia, which completed the process for the reception of offerings, and to which the rescript of the Sacred Congregations ordered the execution after the affixing of edicts, without the Collegiate Chapter having a say. He says the same regarding lands pertaining to pious legacies and foundations, which are commonly called "lamps," "altars," etc.; so that after the report of the Church's own curia, the Sacred Congregation for Bishops and Regular Canons granted permission for the execution by rescript to the Ordinary of Milevitana, as has always been observed for the cathedral church, and for other Collegiate churches and pious places. Furthermore, he says that these questions are so interconnected that the second depends on the first. If the jurisdiction of the Bishop over the aforementioned Collegiate Church is admitted, it clearly follows that, in matters of *emphyteusis*, the administrators are entirely dependent on the authority of the Ordinary, to whom belongs the right of ordering the affixing of edicts. Therefore, the advocate concludes, the Chapter cannot claim any exemption from the Ordinary, because the Bull of Urban VIII did not pertain to the execution demanded; rather, the Constitution of Benedict XIV did not intend to grant such a thing, and if it wished to grant any privilege regarding the governance of the Church's economic affairs, this was annulled contrary to custom. With these points established, the proposed arguments must be examined.

[*Latin ed. p. 148*]

148. MELEVITANA – Doubt I. Does the right of choosing and appointing procurators, for the administration of the goods of the Collegiate Church, belong to the Chapter of the same church, as in this case? And to the extent that it is affirmative; II. Does the same right belong to these procurators to affix edicts for entering into emphyteutic contracts, in this case? RESOLUTION. The Sacred Congregation of Councils, having considered the matter on April 27, 1895, decided to respond: To I, affirmatively; to II, negatively.

BRUNEN. CONCERNING THE RIGHT AND METHOD OF PRESENTING CANONICAL CANDIDATES. April 27, 1895. Through summary petitions.

SUMMARY OF THE FACTS. The Church of St. Wenceslaus, dedicated to St. Nicholas, located in the diocese of Brunen, was elevated to the dignity of a Collegiate Church by Gregory XV in the year 1622, at the urging of Cardinal Francis, Prince of Dietrichstein, Bishop of Olomutz, who established a Prefect and four Canons in that church, in addition to other ministers of the Church, with the following condition: that the right of patronage

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of said Church, with the power of nominating and presenting the Prefect and four Canons to the Ordinary, should be perpetually reserved to the Lords and Princes of Dietrichstein in Nicolsburg, and to their heirs and successors of both sexes. In the year 1760, John Cechotti, Prefect of the Chapter, founded a fifth canonry; and not long after, Charles, Prince of Dietrichstein, with increased resources, endeavored to elevate one of the five canonries to the dignity of a Deanery, which was accomplished by a Bull of Clement XIV, who also bestowed upon all existing Canons and their successors the perpetual privilege of wearing a mozzetta, of violet color.

[*Latin ed. p. 149*]

BRÜNN. 149 In the year 1794, Emperor Francis I, at the request of Charles John, Prince of Dietrichstein, and with the consent of John, Bishop of Brünn, granted certain privileges to the Canons of Nikolsburg, with two honorary canons being the sole exception, allowing each Canon and their successors, perpetually, to wear a coin suspended from a chain, which, being shaped like a cross, bore the image of St. Wenceslaus on one side and the Dietrichstein coat of arms with the inscription "By Word and Example" on the other. These insignia were acquired at the expense of the Prince and were left as a perpetual endowment to the Chapter, which Bishop John solemnly delivered to the Canons. Regarding the honorary Canons of this Chapter, no mention of them is found either in the aforementioned Bull of Gregory XV, nor in the founding documents of Cardinal Francis, nor in the original or subsequent statutes of the Chapter. The first traces of them appear in the year 1780, when the Archbishop of Olomouc strengthened the Chapter, stating that, by a vow of Charles, Prince of Dietrichstein, he had admitted two honorary canons presented by him, granting them a diploma of nomination, whereby they would enjoy all the privileges of the Chapter. In the year 1785, John, the patron prince, asserted that his father, Charles, and his successors had been granted by the Archbishop of Olomouc the right to nominate two honorary canons; therefore, the Bishop of Brünn, upon receiving a canonry presented by the prince, granted the customary diploma of nomination. Others, at other times, were presented by the princes and confirmed by the Bishops, always observing the same procedure, until Wenceslaus, the Bishop of Brünn, indicated to the patron prince that he wished that no more than four honorary canons be appointed henceforth, a number which has been maintained to this day, always using this formula in the process of nomination, so that, with regard to the person to be promoted, consultation is sought not with the Bishop of Brünn, but only with the Ordinary. These things, the Bishop of Brünn explains, "and while..."

[*Latin ed. p. 150*]

150 BRUNEN. Until very recent times, confirmations have been

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requested from the local Ordinary, after which the Prefect of the Chapter delivered the aforementioned coin. In the year 1894, the Princess of Alexandrina ordered that the nomination of an honorary canon, made by Reusdorff-Dietrichstein, should be communicated only to my court. Moreover, that coin, although of Caesarean origin, is nevertheless considered a distinctive ecclesiastical mark of the Canons of Nicolsburg, and the Chapter, under some pretext, delivered it to the newly nominated honorary canon, who, quite unexpectedly, received and accepted it, whether he requested the acceptance of the nomination or not. Therefore, I have not yet seen fit to write to the Princess, nor to acknowledge the nomination in any way. Given that all these things are so, I do not wish to challenge the right of the Collegiate Church of Nicolsburg, which does not exceed four canons, to nominate honorary canons, however acquired by the Princes of Dietrichstein, due to its long-standing practice; however, based on the recent instructions given to me by Your Eminence regarding honorary canons, it seems necessary to request: 1. that in the future, nominations, which have often been made, should not be permitted to be made without the consent of the Bishop in whose diocese the Collegiate Church is located; 2. that the one making the nomination should abstain from any action that belongs only to ecclesiastical superiors; and finally, 3. that both the one making the nomination and the one nominated should be required to request the acceptance of the nomination from the local Ordinary.

A SYNOPTIC DISCUSSION. Although the Bishop does not wish to raise doubts, the legitimate right of the patron to present honorary canons does not seem entirely to be passed over in silence; indeed, the question arises whether the patron, in this case, can legitimately claim the right to nominate honorary canons. — This inquiry seems even more...

[*Latin ed. p. 151*]

BRUNEN. 131. It is necessary, because the patron, in his claims, will chiefly assert this faculty for himself based on the very title of patronage. However, this assertion is entirely foreign to any rule of law, for according to rule 28 of Juris in 6: "Those things which exceed the common law cannot be drawn to a consequence." Indeed, the privilege of patronage derogates from the Ordinary's faculty, which is founded in common law, of freely conferring benefices; therefore, the patron's privilege of presenting a cleric to a benefice, since it is a restriction of common law, must be interpreted very narrowly, so that it cannot extend from the right of appointing titulars to the appointment of honorary degrees; as is inferred from the decree of the Council of Trent – Session 25, chapter 9, concerning reforms. Nor does a centennial prescription seem to be able to be invoked usefully, for when prescription resists common law, a centennial prescription is not sufficient, but an immemorial prescription is required, as Boniface VIII clearly states

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in the famous chapter 1, De praescript. in 6, saying: "For although he who prescribes an ecclesiastical right, if it is not contrary to common law, or if there is no presumption against him, sufficient is good faith; but if common law is contrary to him, or there is a presumption against him, good faith is not sufficient, but a title is necessary, which gives the possessor a reason for prescribing; unless a prescription of such a length of time is alleged, of which there is no memory to the contrary," namely, unless there is an immemorial prescription, as canonists generally point out in this regard, opposing an immemorial prescription to a centennial prescription. Therefore, the Council of Trent, because of the resistance of common law, in the aforementioned place, decrees that the right of patronage cannot be acquired by prescription unless "from repeated presentations, over a very ancient period of time, which exceeds human memory." Therefore, it is futile to speak of a method of exercising this right, since the very right seems not to be able to be granted in any way. But on the other hand, it seems that the opinion of the Bishop should be followed, who believes that it is better not to bring up the right of presenting even honorary canons in this matter, leaving the patron with the right of patronage.

[*Latin ed. p. 152*]

152 BRUNEN. Peaceful possession. Indeed, the prescription brought forth by Boniface VIII is peremptory in cases where no title exists; but in the matter of the one prescribing, a colorable title, or a concession made to the patron by the Archbishop of Olmütz, is presented for the appointment of honorary canons. Certainly, it was not within the power of the Archbishop to grant this, unless it is held that, by the benign concession of the Pope, this was entirely permissible to him; but in this case, a defect in the title can be found that must be remedied by prescription, since it demands not a true, but a colorable title. Thus, as with Reiffenstuel in Title *De praescriptione*. But once the right has been admitted, care must be taken in its legitimate exercise. And in truth, the Bishop, especially the Bishop of Le Conquet, "regarding the manner in which he exercised this right for the last time," requests "that in the future, appointments should not be made frequently without the consent of the Bishop, in whose diocese the collegiate church is located." The Bishop is justified in requesting this, both by law and by reason; for while the patron has the right to present a cleric, the institution of the title belongs to the Bishop by legal necessity, even if the title is conferred only for honor. For the right of presentation belongs to the patron "so that if he presents a suitable cleric, the Bishop or another to whom the institution pertains, is obligated to admit him and to institute him in the benefice. Common and certain, see *arg. c. Nobis et toto Titulo De iuspatronatus -etc.*" Thus, Reiffenstuel, Title *De Iure patronatus*, n. 66. Furthermore, it is also evident from Title *De institutionibus* - Lib. III, Decret. Greg. X. Moreover, when dealing with a collegiate church, the

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consent of the Chapter is also required, as determined by the *Litterae* in the form of a Brief, dated January 29, 1894, under § 1 (1): "The Bishop or Ordinary, when nominating an ecclesiastical person from another diocese as an honorary canon, must inform the Ordinary to whom the nomination is submitted, and obtain his opinion, and must also demonstrate to that Ordinary the insignia and privileges that would be granted by the nomination." Furthermore, the Bishop's opinion is also heard, so that "(1) You have such letters, Vol. XXVI, 449."

[*Latin ed. p. 153*]

BRUNEN. "Quicumque nominatum facit, sive nominatur, teneatur nominationis acceptationem a loco Ordinario petere." Deinde Episcopus postulat "ut nominans abstineat ab omni actu, qui praepositis tantum Ecclesiasticis competit," alludens ad insignem traditionem, quam sua authoritate fecit patrona; contra, tamen, consuetudinem praedecessorum patronorum. Intentionem Episcopi iuri communi conformem esse arguitur ex Titulo — De institutionibus — ubi, distincta institutione tituli collativa, ab institutione quam realem vocant, seu investitura, instaurationem, unanimi sententia docent, huiusmodi institutionem non patrono competere, sed ex iure decretalium Archidiacono, cap. — Ad haec — De off. Archid. — vel Decano seu Praeposito quoad canonicos in capitulum cooptandos, arg. cap. 7 — De concess. Praeb. Hodie Archidiaconi, cum evanuerit antiqua potestas, institutio realis Episcopo solet reservari. At patronis minime competit, nisi ex privilegio Papae acquisierint, aut legitime praescripserint. Unde conformis erat iuri communi mos, quem ita narrat Episcopus." Dum autem ad recentissima usque tempora (patroni) a loco Ordinario, saltem confirmationem petiverunt, quam dein sequebatur per Capituli Praepositum numismatis... traditio etc. Quibus animadversis, quaesitum fuit quomodo preces essent dimittendae. RESOLUTIO. Sacra Congregatio, re disceptata sub die 27 Aprilis 1895, censuit respondere: "Affirmative, iuxta petitionem Episcopi." Ex QUIBUS COLLIGES: I. Nominationes, etiam Canonici titularis, fieri non posse inconsulto Ordinario loci, quo reperitur Cathedralis aut collegiata Ecclesia. II. Patronis solam competere nominationem ad beneficium, minime vero institutionem in eodem aut insignium traditionem; cum id Episcopo competat. III. Ab eodem Ordinario loci petendam esse acceptationem nominationis, sive a nominando sive a nominato.

[*Latin ed. p. 154*]

154 PARISIEN. DISPENSATION FOR MARRIAGE. April 27, 1895. Session 24, chapter 6, Concerning the impediment to marriage. SUMMARY OF THE CASE. In Paris, in the church commonly called "Notre Dame de Lorette," Robert, aged 28, and Camilla, aged 19, were lawfully married on April 21, 1890. However, this marriage, which seemed to be blessed, did not have a happy outcome. For, during their marital life, the spouses

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attempted to fulfill their marital duties, but in vain, as they themselves affirm, because the wife suffered from a condition commonly known as vaginismus, so that upon contact with the husband's penis, the opening of the vagina would contract painfully, and a violent contraction of the nerves would spread throughout her entire body. They consulted several doctors, but the spouses testify that the remedies of the healing arts were of no avail, and that they were never able to complete the marital act. Then, in June of the year 1891, Camilla underwent a surgical operation, but it seems to have been in vain, for the spouses, under oath, state that they have since attempted the act several times, but without success. SYNOPTIC DISCUSSION. DEFENSE OF THE HUSBAND. The husband's advocate begins his defense with a description of vaginismus: "Vaginismus," (the writers say) "is, in reality, only a symptom. Under this term, we understand a morbid excitability of the vagina, manifested by hyperesthesia of the vulva and vagina, and by spasmodic contractions of the constrictor muscle of the vulva, and sometimes also of the muscles of the pelvic region and the entire organism." Thus, Sims, Charles Schroeder, Siaipson, Debout, Michon, Charrier, Marion, Scantoni, Courtg, Hildebrandt, Stafeicit, Brescky, Budius, and many others. Vaginismus is rightly called "a symptom"; for it is more than a disease, it is a manifestation of a disease, for it is an effect that presupposes certain causes. These causes are:

[*Latin ed. p. 155*]

PARISIAN. 155, as the writers relate, some are local, such as "the narrowness of the vaginal entrance, the hardness of the hymen, certain particularities in the situation of the external genital organs, etc., etc." while others are general, which indeed are connected with the physical conditions of the woman. The phenomena which are commonly produced from vaginismus follow the nature of the causes, receiving either a greater or a lesser explanation, according to whether the vaginismus arises from general or local causes. If, therefore, the vaginismus proceeds from local causes, then the phenomena, for the most part, do not extend beyond the female. But if it arises from a morbid condition of the nerves, that is, from hysterical causes, then, besides the violent constriction and restriction of the parts, "hyperesthesia and spasmodic contraction of the vagina," general phenomena occur, which indeed indicate the origin of the disease, such as tremors and convulsions of the limbs, attempts at vomiting, fainting, etc., etc. Vaginismus, says the Orator, involves difficulty or impossibility of penetration. "This spasmodic state," (says Charles Schroeder in his treatise *De Morbis Organorum Muliebrium*, translated by E. Lauwers, page 530 and following), "entails the difficulty or impossibility of sexual relations, and of digital examination." However, if it proceeds from local causes, sometimes remedies can be usefully applied. But if it is joined to general causes, then a cure is almost impossible. For it is not a defect of the parts, but a defect

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of the whole body, of the disposition, of the nature of the woman, which is a laborious thing to correct. "Sometimes," says the same Schroeder in the aforementioned place, "the muscular cramps are so intense that the introduction of a finger is absolutely impossible. These cases are rather of a psychic nature, and they have nothing to do with irritations or traumatic injuries of the vaginal entrance. It is sufficient then for the simple approach of a finger to produce a spasm of muscle groups. When such a person comes to marry, any approach may be impossible." The Orator continues, the vaginismus by which Camilla was afflicted...

[*Latin ed. p. 156*]

156. The individual in question was of this nature, that is to say, he was afflicted with a morbid condition of the nerves, and therefore marital acts should have been rendered impossible; as the medical experts attest. With these premises, the advocate approaches the discussion concerning consummation, which he asserts to be most evident, because in this case, besides the sworn fidelity of the spouses, confirmed by the testimony of witnesses, and besides countless supporting arguments gathered from the circumstances of time, place, and persons, which would suffice, according to chapter 5, book 4, title 14 concerning impediments and defects, according to the teaching of Doctors, and according to the custom of the Sacred Congregation, to allow a safe judgment to be rendered regarding dispensation, there arises the illness of the woman, whose nature and severity constitute an invincible argument for dispensation. Indeed, Robert affirmed under oath that the marriage had not been consummated. According to the advocate, the man's confession is consistent with the woman's sworn fidelity. How much weight should be given to the faith of the spouses in this case, it is clear from the documents; the advocate notes. We are dealing with betrothed individuals who are incapable of lying, concerning whose sincerity witnesses testify, who are equally incapable of lying. "Robert," says the court of Paris, "is well known to us, and faithfully fulfills the duties of the Christian religion, in which he was most carefully educated." And elsewhere: "I have considered it my duty to offer the best possible testimony regarding his religion and his truthfulness, for he has always been and is devoted to the Catholic religion. He studied letters in the minor seminary of Paris, and civil law at the Catholic University, and has always led a most honorable and religious life, and in this case, he has provided the greatest arguments for sincerity." Furthermore, all the other witnesses testify, the details of whose testimonies, so as not to stray from the scope of the argument, are not recounted. However, the advocate notes that the piety and sincerity of these witnesses have been widely attested to, and that the parish priest of Cabanaux, the Bishop of Angouleme, a Dominican provincial, and the court of Paris have written: "We are pleased to provide

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our official..."

[*Latin ed. p. 157*]

PARIS. "We assert, and declare, that the witnesses brought forward in this cause are entirely worthy of belief, and we specifically testify that the Most Reverend Lord of Mackao, a member of the French legislative assembly, and Monsieur Jamet, professor at our Catholic institution in Paris, are known to us, men of whose integrity no slight suspicion can be raised."

Furthermore, the advocate argues, the witnesses do not merely offer a sworn statement, but under the solemnity of the oath, they assert that they have a moral certainty regarding the non-consummation of the marriage.

Indeed, who does not see the great importance of this solemn affirmation, which comes from witnesses who were present in the circumstances, who observed the events with their own eyes, who, at a time when there was no suspicion, received the confessions of the spouses, who were able to examine the difficulties of the marriage? It is established and proven in law that the confessions of spouses, given at a time when there was no suspicion, contribute greatly to the demonstration of non-consummation.

Indeed, in the case of these confessions, there is a continuous series, to which weight is given by the circumstances of place, time, and persons. And truly, even during the marriage, Camilla sends letters to her uncle, in which she describes the abnormal conditions of the marriage. After a few days from the beginning of the marriage, the spouses are forced to consult doctors. In August of the same year, Camilla goes to stay with the couple in Rousiers, and there, the guests learn from her about the non-consummation of the marriage. The remedies applied by the doctors are ineffective, the woman's health worsens; at the advice of Doctor Petit, a surgical operation is performed in Paris, and Camilla is found to be intact. From the operation until the separation, two years pass. But during that time, the advocate says, the non-consummation of the marriage was confirmed by the spouses, not once, but several times. This is also understood, from the testimonies of the couple in Rousiers, from the mother and brother of Robert, and from Camilla's sister. Finally, Madame Dardaillon testifies that she also received the same confessions from the spouses, at a time when there was no suspicion.

[*Latin ed. p. 158*]

158. PARISIEN. Dominus Guillot, Dominus Jamet, et Reverendissimus Dominus parochus Chainiat. Sed praeferenter, orator censet opportunum esse adducere argumentum ex morbo Camillae, et ex testimoniis medicorum, sive extrāiudicialium, sive iudicialium. Et vere, morbus consummationi matrimonii obstitit in primo momento matrimonii, id est, usque ad operationem chirurgicam, ut luculentissime patet ex testimoniis medicorum, qui eam peragerunt. In secundo vero momento, id est, ab operatione chirur-

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gica usque ad separationem, probatio non minus plena est, juxta patronum. Et vere, hic ratiocinatur: ut aliquid dubium super non consummationem haberi posset, demonstrari ex adverso deberet, post operationem chirurgicam, physicas mulieris conditiones, ex quibus impossibilitas matrimonii consummandi progignebatur, mutatas quoquo modo fuisse. Iisdem enim causis positis, iidem sequuntur effectus. Sed haec mutatio, praeterquam quod a fide iurata et non iurata coniugum, praeterquam quod a testium consonis depositionibus, et argumentis innumeris, quae totum cohabitationis spatium complectuntur, et ex quibus luculentissime patet matrimonium in secundo momento, non secus ac in primo, inconsummatum permansisse, excluditur: 1. a natura morbi, qui, cum physicas mulieris conditiones afficeret, remediis localibus amoveri nequibat; 2. excluditur ab impossibilitate praescripta a medicis operatoribus remedia adhibendi; quomodo enim Camilla in vigilia "speculo" uti potuisset, si sopore artificiis inducto, muliebrium contactus, membrorum confractiones excitabat? 3. excluditur a dubiis ipsorum medicorum super operationis effectibus: "la dilatation et le traitement indiqué après l'opération étaient le seul moyen, qui put guérir Mme. Camille et encore l'efficacité était elle incertaine, c'est le seul moyen de guérir le vaginisme et encore n'est il pas infallible"; 4. excluditur postremo a testimoniis medicorum, sive iudicialium, sive extrāiudicialium, et a quibus satis superque liquet morbosum mulieris statum, post operationem chirurgicam, eumdem permansisse, et eo.

[*Latin ed. p. 159*]

PARIS. 159. It was, in fact, entirely impossible for the marriage to remain unconsummated. Indeed, the Advocate argues that, in the second instance, the difficulties in consummating the marriage increased; this is confessed by Camilla, and confirmed by the physicians. Furthermore, the Advocate adds, the judicial physicians, who, at the mandate of the Parisian court, examined the woman, provide evidence of this. After these statements, the defender enumerates the reasons for the dispensation, stating that the first consists in an insuperable aversion between the spouses. *Corrad. in praxi disp. 46, 8, cap. 3, n. 33.* Camilla detests her husband; she says, "My niece has finally come to dislike her husband." Robert is carried by a deep repugnance against the woman. Both spouses, with the seventh degree of kinship, declare that reconciliation is impossible, indeed, detrimental. Another reason is found in the persistence of the illness. Prudence forbids the spouses from living together. A third reason is the judicial separation already initiated before a secular tribunal by the woman, and which is now publicly known. Finally, the defender emphasizes the spiritual benefit sought by the petitioner for the dispensation, which is considered by many, as stated by Perez De Matrim, in disput. 20, sect. 7, num. 11; by the Sacred Rota in decision 86, sect. 7 post sec und. vol. Farinae, and by numerous resolutions of the Sacred Congregation of the Council.

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OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. On the other hand, the defender of the sacred bond, in order to defend the validity of the marriage against the plaintiff, begins by examining the testimonies of the physicians, and in particular, he presents the testimonies of Francis Hallopéan, Rodolphe Labusquière, and Alphonse Pechin, who attended to Camilla's care. From this examination, he concludes that the alleged inconvenience is not fully proven. What we have heard so far regarding the asserted unconsummation, from the mouths of the physicians, observes the defender of the marriage, refers only to the first fourteen months of conjugal cohabitation. Therefore, it must also be considered whether the spouses...

[*Latin ed. p. 160*]

160 PARIS. From the month of June 1891 to the month of August 1893, or after Camilla's hymen was dilated by Doctors Labusquière and Pechin through a medical operation. The investigators of Paris inquired about this matter from these three aforementioned doctors, who had been called upon to treat Camilla, and furthermore, they entrusted the examination of the woman's body to two other expert doctors, with special instructions prepared. But, the defense argues, the answers of the doctors are not those that are required, because they are accompanied by hesitation. The doctors Bucquoy and Ferrand, presented by the judge, exhibit even more hesitation, the defense continues. Nor, says the tutor of the marriage, does the confession of the spouses lack difficulty, even though seven witnesses declare them worthy of all belief. For the spouses are indeed in agreement with each other, while affirming that the marriage remained unconsummated: and this is not surprising, because both desire the marriage to be dissolved. But the confession of one spouse contradicts the confession of the other, in those matters in which the advantage of one spouse entails the disadvantage of the other spouse: which would certainly not happen, if the spouses loved the truth, if the seventh witness, which proclaims that the spouses are lying, were free from partiality. And therefore, if Camilla truly recounts what happened, the celebrated vaginismus should be inflamed with tales: Robert used to mistreat Camilla like a brute; it is because of these mistreatments that the spouses Robert and Camilla separated; what Robert's behavior was with Camilla cannot be discovered from Robert himself, nor from the witnesses presented, but it remains a matter of great speculation: and Robert speaks the truth when he affirms: "God alone knows what my life was like for nine months." Nor is there a reason why he believes that Camilla would rather deflect from the truth than himself. For all the witnesses proclaim the veracity of the spouses in the same way. Finally, the advocate for the marriage observes that faith should not be given to the spouses in those matters which they

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confess unanimously to their own advantage, as Sánchez rightly desires.

[*Latin ed. p. 161*]

161 PARISIAN. This practice, since it does not favor the absolution of those confessing, is to be avoided. However, the seventh seal has always been a necessary oath in matrimonial causes. But no one will easily believe that the confession of spouses, confirmed by the seventh seal, is sufficient. Indeed, even in minor matters, a judge is accustomed to distrust the confessions and oaths of those involved, even if a multitude of witnesses present themselves, who proclaim them to be worthy of all faith. Having stated these things, the following point must be considered: Whether, in the case of a marriage that is valid but not consummated, dispensation from the marriage should be sought from the Most Holy Congregation. RESOLUTION. After deliberation by the Sacred Congregation on April 27, 1895, it was decided to respond: Affirmative, with the condition that the woman not be permitted to enter into other marriages without the consent of the Most Holy Congregation. CREMONA. OF PAROCHIAL LAWS. April 27, 1895. Council of Trent, Session XI, chapter 11, concerning reforms. SUMMARY OF THE FACTS. At the urging of Father Timothy of Maffei, a most pious man, in the year 1450, the Senate of the city of Cremona, considering the terrible plague that was ravaging that province, decided to establish and build a large hospital under the invocation of the Blessed Virgin Mary of Mercy. To accomplish this, it seemed fitting to obtain permission from the Supreme Pontiff Nicholas V to unite the goods of the smaller hospitals located in the city and in the diocese to the new hospital. Furthermore, it was requested that the Pope would deign to honor the new hospital with the privilege of exemption from the jurisdiction of the Ordinary, as had been granted to the hospitals of Florencia and Siena, which were very famous at that time, by Urban VI. Records, Volume XXVIII, page 606.

[*Latin ed. p. 162*]

162 CREMONA. Pope Nicholas V graciously approved, through the Bull "Inter universa" of the year 1451, granting that "in some suitable and honorable place within that city, one Hospital with an oratory, or chapel, houses, a cemetery, and other necessary buildings, under the title of the Blessed Virgin Mary of Charity, be founded and constructed, according to the model and likeness of the aforementioned hospitals of Florence and Siena, or otherwise as may please the aforementioned Community and citizens, from their own property, and that they may freely and without any requirement of permission from the diocesan authorities, or any other authority, be granted full and free license and power to do so. Furthermore, the aforementioned Community and citizens may freely choose and appoint those who will administer the founding, goods, and the poor of this hospital, and may enjoy the privileges, statutes, and customs of either the afore-

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mentioned hospitals of Florence and Siena, or of any of them, and may also freely request, demand, receive, and convert into the construction and fabric of this hospital any uncertain, poorly managed, or impoverished legacies, and legacies to pious causes, to legatees, or to unspecified beneficiaries, which within the aforementioned city and diocese have been delayed until now from due execution within the time prescribed by law, and may freely grant and allow such things by our authority." Enjoying this institution, the hospital grew more and more, until, in the year 1750, due to the excessive increase in the number of the sick, the cemetery and oratory, which were built within the walls of the hospital, were no longer sufficient for new needs; therefore, another church under the title of Saint Felix and a suitable cemetery were constructed on a certain property of Pius Loci, in front of the old building, but separated from it by a public road, commonly called "dei F oppone." This new church has already been the seed of secular discord, as is evident in the present matter. For, in the first place, the parish priest of Saint Prosper and Saint Sepulchre, within whose territory the church of Saint Felix had been founded, began to claim the church as his own, asserting his parochial jurisdiction.

[*Latin ed. p. 163*]

CREMONA. In the year 1777, in order to settle a dispute, the Rectors of the Hospital, the Bishop, and the parish priest entered into an agreement, by which it was recognized that the church of Saint Facius was immediately subject to the jurisdiction of the Bishop. However, at the beginning of this century, due to the decrees of Napoleon I, the parish of Saint Sepulchre was suppressed, and the church was united to the parish of Saint Abundius, whose parish priest again sought to claim jurisdiction over the church of Saint Facius, relying primarily on the decrees of the Emperors Joseph II and Napoleon I, which had completely altered and determined the boundaries and rights of the parishes.

In truth, the episcopal court and the administrator of the Hospital entered into a certain agreement in the year 1831, whose fundamental principle was to recognize that, due to the decrees of Joseph II in 1789 and Napoleon I in 1806, the Hospital had lost all right to parochial status, and had subsequently been subjected to the parish priest of Saint Abundius. This agreement, as is evident, granted to the parish priest of Saint Abundius not only the church of Saint Facius as a subsidiary church, but also extended his jurisdiction over the Hospital itself, and over the sick residing there, and over the chaplains.

However, later, another question arose, raised by the parish priest of Saint Abundius and brought to a resolution with the consent of the court, by a delegate of the Imperial Government; namely, whether all the sick and all those serving in the Hospital, or only some who permanently resided there, were subject to the parish priest of Saint Abundius. The answer was:

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the parochial jurisdiction over persons and families permanently residing in the Hospital and in the adjacent pious places belonged to the parish priest of Saint Abundius for the time being; the spiritual care of the sick temporarily residing there belonged to the spiritual assistants of the Hospital.

In the year 1854, by a decree of Anthony Novasconi, Bishop of Cremona, secular priests were appointed as chaplains, assisted by the Brothers of the Camillian Order, who ministered to the sick, with the consent of the parish priest of Saint Abundius, who obtained full recognition of his rights from the Fathers.

[*Latin ed. p. 164*]

164 CREMONEN. Breve tempus postquam PP. Camilliani ministerium in Hospitali desiverunt, saeculares presbyteri iterum adhibiti sunt ut cappellani, et rursus controversiae veteres inter cappellanos et parrochum S. Abundii resurgunt. Ad has finiendo, parrochus S. Abundii postulavit apud Episcopum ut sententia iudiciali recognosceret ius parrochii S. Abundii in hospitale, ut cappellanis perpetuo silentium imponatur. Episcopus, post examen instrumentorum, quibus moderatores hospitalis fessi erant et rata habuerant, decrevit die 1 Augusti 1884 sententiam omnino favorem parrochii, ut parochia S. Abundii fruatur iure parochialitatis in ecclesia S. Facii, ut subsidia et in ipsum hospitale eiusque cappellanos. Tamen, postea, debuit suspendere executionem huius sententiae, obiciendo cappellani, tabulas fundationis hospitalis pessumdatas fuisse. Obiectio magna ponderis visa est eidem ordinario, adeo ut pene mentem suam mutaverit, cum rogatus esset de voto a S. C. C. apud quam moderatores hospitalis recursum habuerant. Exinde S. C. C. die 9 Iunii 1892 ita respondendum censuit: "Nihil esse innovandum: cappellani perseverent in cura animarum exercitio, independenter a parrocho, prout hucusque gestum est; et imponendum partibus silentium." Sed nec huic responso partes acquieverunt, inter se acriter contendentes, quasnam functiones parrocho S. Abundii in ecclesia S. Facii peragere fas esset. Contentiones dirimere arbitratus est Episcopus per suum decretum die 26 Septembris 1893, distinguens taxative functiones a cappellanis et a parrocho S. Abundii respective in ecclesia S. Facii praestandas. Nihilominus, cum animorum consensus, inter cappellanos et parrochum, exoptatus non potuerit obtineri, iterum apud S. C. C. partes institerunt ut, servato iuris ordine, quaestio definitive absolveretur.

[*Latin ed. p. 165*]

CREMONA. 165. A SYNOPTIC DISCUSSION. A DEFENSE OF CHAPLAINS. The chaplains of the pious foundation, by virtue of a decree, present the following arguments. The patron, having examined the decree of Nicholas V, which grants an exemption from the jurisdiction of the Ordinary, states that the Rectors of the Church of Saint Facius

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and the adjacent cemetery of the pious foundation, having presented a petition to the Sacred Congregation of Rites, declared that, since the aforementioned hospital had been immediately subject to the Holy See, they requested that the Holy See grant them the faculty to entrust the blessing of the aforementioned new cemetery and oratory to the Most Reverend Ordinary. This faculty was granted on September 12, 1761. Therefore, he concludes: 1.° That since the aforementioned cemetery and oratory were established with private funds, and solely for the benefit and convenience of the hospital, and are also located within its territory, they are exclusively under its jurisdiction and ownership. Therefore, it is impossible to infringe upon these established rights without a grave injustice. 2.° That since the faculty to delegate the blessing of the cemetery to the Bishop was requested from the Holy See, while, according to common law, such blessings belong to the Ordinaries, it is most clearly demonstrated that the hospital, and its cemetery with the oratory, were, even in 1761, exempt from any authority of the Bishop. This is all the more true with regard to the jurisdiction of the parish priest of the place. The parish priest of Saint Abundius maintains that he has full jurisdiction over the aforementioned church. However, the advocate points out that the hospital is entirely privileged and exempt; that the Church of Saint Facius, together with the cemetery, are by right under the patronage and ownership of the same hospital, and for the good and benefit of the sick; and that since the right of parochiality belongs to the same hospital, the Church of Saint Facius is truly nothing more than a subsidiary of the hospital, or rather, a seat in which fun-

[*Latin ed. p. 166*]

166. The affairs of Cremona are being handled. Furthermore, he says that, even according to common law, no jurisdiction belongs to the parish priest of Abundii. For he states that no one acquires a right of patronage by foundation, construction, or endowment; nor is it a real right if it adheres to the property; Gagliardi on Canon Law, book 3, chapter 11. Also, it is certain in law that a parish church has no jurisdiction over other churches located within the parish boundaries, and that a chapel belonging to lay patrons is not subject to the parish priest regarding functions that are not parochial, unless the parish priest enjoys a special right or privilege; Chapter concerning the duties of archpriests, chapter concerning chapels of monks.

This is also demonstrated by the decree of the city and the world, dated December 10, 1703, of the Sacred Congregation of Rites; and the Sacred Congregation has often resolved similar questions in accordance with the form of this decree, especially in Rieti, on January 13, 1854, concerning the Sacred Functions. Also, in Marsorum, on June 26, 1858, in response to the question: "Is it permissible for the patrons of Vetoli to celebrate solemn Masses and other non-parochial sacred functions in their public chapel,

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through a chaplain and other priests, independently of the parish priest?" the answer was: "Affirmatively, in accordance with the decree of the city and the world, of the Sacred Congregation of Rites, dated December 10, 1703."

The patron, appealing against a sentence pronounced by the Ordinary in 1884, stated that it had no value whatsoever, and that the documents on which it was based were equally worthless, as argued by the administrators of the hospital themselves. The patron noted that the administrators of the hospital had never permitted, nor would they permit, the rights of the pious foundation to be violated. For this reason, the Sacred Congregation, under the date of July 9, 1892, regarding such a dispute, responded: "Nothing should be changed; the chaplains should continue to exercise their pastoral care independently of the parish priest, as they have done up to now, and silence should be imposed on the parties; and this should be notified to the Bishop."

However, the patron continues, the parish priest not only did not refrain, nor did he acquiesce to this decision; but rather, he threatened the chaplains with incurring the censures of an Apostolic Bull.

[*Latin ed. p. 167*]

CREMONEN. 167. If the seats [in the church] were not to conform to the decrees of the Bishop, as is stated in his letter, S. O. C., sent on December 3, 1893. This letter indicates that the use of the church of S. Facii belongs to the chaplains with regard to the sacred functions concerning the persons residing in the aforementioned hospital; but for other functions, the use of the church belongs to the parish priest of S. Abundii. But here, the speaker asks: how, and by what right, were all these things done, when the hospital enjoys immunity, and the church of S. Facii is, by right, under the patronage and property of the same? How can the same thing, and at the same time, exclusively and uniquely serve two opposing uses? Then, the patron, recalling the frequent disputes between the chaplains of the hospital and the parish priest of S. Abundii, due to the mixed use of the church of S. Facii, states that, from ancient times, there has been in the church of S. Facii a certain association, now called the "Pia Unione," which has always been governed by the directors of the hospital. However, some years ago, the director at that time, feeling overburdened by the spiritual care of the sick, allowed the parish priest of S. Abundii to take over the direction of this same Pia Unione. On this occasion, the modern parish priest not only claims that the management of this pious work exclusively belongs to him; but he also presumes to access the same church whenever he pleases. Therefore, the administrators of the hospital ordered the director, or the senior chaplain, to transfer this association, with the consent of the ecclesiastical superior, to another church. But the patron, in order to completely thwart the intentions of the parish priest of S. Abundii, argues that the right of

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parochiality resides within the aforementioned hospital, and is exercised in the church of S. Facii, which was established for this very purpose. In pursuing his argument, the speaker states: It is not doubted, nor is there any question, that the right of parochiality once belonged to the hospital in question; and this is even readily admitted by the opposing parish priest himself. Therefore, it remains to inquire whether the parochial right has truly been taken away from the hospital over time, or rather, whether it has been taken away afterwards.

[*Latin ed. p. 168*]

168 CREMONA. It persevered. The parish priest asserts that the right of parochiality ceased from the year 1788 by an imperial decree of Joseph II, by which it was ordered that the parishes be distributed in a better order. Furthermore, in the year 1805, on the very 13th of November, another distribution of parishes was made by Bishop Homobono Ofiredi, who reduced the number of parishes in the city of Cremona to only eight. — Whether in the first list of the distribution of parishes, or in the second, not a single word was expressed concerning the alleged suppression of the parish of the hospital; nor was there mention of the union of the aforementioned parish of the hospital with the church of Saint Facius to another parish. Therefore, in the decrees and lists of the new distribution of parishes, the parish of the hospital was not mentioned, neither as suppressed, nor as united with another parish. Consequently, the assertion of the parish priest, that the parish of the hospital was suppressed during the years 1788 and 1805, lacks all foundation, according to the advocate. But, from the list of parishes of the year 1788, it is clearly evident that the church of Saint Abundius was not a parish, but merely a subsidiary of the parish of Saint Nazarius. Therefore, the parish of the hospital could not have been subject to the church of Saint Abundius, since it was not yet a parish, the advocate argues. On the contrary, the parochial right remained with the hospital, after said decrees, as is evident from the marriage records, celebrated therein, by its own right. Furthermore, the advocate argues, it is a principle of law that, in order for the suppression of a parish to be valid, a just and necessary cause, and solemnity, are required; *Rota in Cracovien. Canonicatus 15 Ianuarii 1725. § Ex quibus coram Card. Calcagnino. In Camerinen. Parochialis 11 Septembris 1777 § Addunt.* — Otherwise, a suppression made without solemnity, and without a necessary cause and utility for the church, from which it is abhorrent, cannot subsist, according to the sacred canons, Cap. Maioribus 8, Cap. Veniente 26 de praebendis, Reiffenst. lib. 3 Decret, tit. 12, § 2, n. 34, in Forolivien. Reintegrationis Paroeciae 18 Maii 1817 § And on the contrary. Therefore,

[*Latin ed. p. 169*]

CREMONEN. The cause for the suppression [of a benefice] must be

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formally proven: for the Bishop who is suppressing the benefice is not bound by the cause for suppression, unless the same has been conclusively proven. Corrad. in praxi Benefic., book 2, chapter 8, paragraphs 33 and 34. — The Sacred Roman Rota, before Cavalerio, in decision 439, paragraph 6, in the case of Camerinen. Parochialis, September 13, 1777, § Utramque. DEFENSE OF THE PAROCHIAL PRIEST OF SAINT ABUNDIUS. On the other hand, the parochial priest of Saint Abundius vigorously insists on asserting his jurisdiction over the church of Saint Facius. Indeed, on April 21, 1892, he appealed to the Sacred Congregation of the Council, requesting that it deign to confirm the decree of the Ordinary of August 1, 1884. Even today, in presenting his arguments, he retracts the reasons which he himself had previously advanced, and all of these are reduced to those documents which, from the beginning of this century, up to the sentence invoked by the Bishop, have assigned the parochial jurisdiction over the church of Saint Facius to the parochial priest of Saint Abundius. I have already indicated the validity and origin of these documents in the narration of the facts. Relying on these, the parochial priest is astonished that the chaplains, not acquiescing, have wished to appeal the decree of the Sacred Congregation of the Council of 1892, which I have already mentioned, and he interprets the matter in his own favor. He observes that the rescript speaks of the chaplains' jurisdiction being independent, but only "over those who are sick in the hospital," a jurisdiction which, he maintains, can only be exercised in oratories, within the confines of the hospital, and not in the church of Saint Facius, although the latter remains under the patronage of the hospital. Then, recounting the disputes that have arisen between himself and the chaplains, he says that they are derived from a perverse interpretation of the rescript, by which the chaplains believe that parochial jurisdiction over the church of Saint Facius has been assigned to them; and for this reason, they entirely exclude the parochial priest of Saint Abundius. He especially states that, after the rescript of the Sacred Congregation of the Council, certain functions in the church of Saint Facius belong to the chaplains by virtue of the law; therefore, abandoning his intention of obtaining confirmation of the sentence of the Ordinary of 1884, he now seeks only...

[*Latin ed. p. 170*]

170 CREMONA. Now requests that the decree of the Bishop of September 26, 1892, which expressly distinguishes the functions attributed respectively to the parish priest and the assistant priest, be confirmed. Finally, the parish priest of St. Abundius, with the grace of Mary, added responses to the allegations made by the assistant priests, addressing the most difficult objections raised by them. After considering these arguments on both sides, the following questions were proposed for clarification: I. Does the parish priest of St. Abundius have jurisdiction in the church of St. Facius,

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or, rather, does the church itself enjoy the privilege of exemption, similar to that of the aforementioned hospital in this case? II. Does the right of parochiality remain with the hospital itself in this case? RESOLUTION. The Sacred Council, after discussion on April 27, 1895, decided to respond as follows: To I. Negatively to the first part, affirmatively to the second. To II. As provided in the first (1). MILAN. PONTIFICAL. April 27, 1895. Tridentine Council, Session 6, Chapter 5, on reforms. In the city of Milan, the Collegiate Church of St. Mary of Scala, commonly known as "della Scala," was founded and appropriately endowed in the year 1383 by the Queen, wife of Barnabas, Vice-Count of Scaligeri, Duke of Milan. After her death, her husband, who had been Duke of Milan, completed the work she had begun. Therefore, having the Dukes of Milan as patrons of this church, Francis Sforza, the successor in the Duchy, increased the assets of the Collegiate Church, and by order of the Supreme Pontiff Clement VII, a COMPENDIUM OF THE FACTS: (1) Recole, Vol. XXIV, 613, and Vol. XXVII, 559.

[*Latin ed. p. 171*]

In Milan, 171 obtained the privilege of exemption from the jurisdiction of the Archbishop, as well as the use of pontifical vestments for the Prefect of the aforementioned Church. This privilege, which is the object of this controversy, is contained in the Bull of concession, which is fortified with the most extensive clauses of Clement VII: namely, with the words: "We decree and ordain perpetually that the modern and presently existing Prefect of said Church shall wear the alb, or rochet, as do Bishops, and also within the same Church, and outside of it, in processions and other public acts, he shall use the mitre and ring, the pastoral staff, the chirothecae, the dalmatic, and all other pontifical insignia, etc." When the affairs of the province of Milan passed to Charles V, King of Spain and Duke of Milan, he elevated the Church of St. Mary to the dignity of a Chapel Royal. Maria Theresa, Empress of Austria, confirmed this title of Chapel Royal for the aforementioned Church, abolished the Prefect and the Major Chaplain, and transferred the collegiate body from its ancient seat to the more beautiful Church of St. Fidelis, retaining the ancient name of origin, so that it is still commonly called "S. Maria della Scala" in St. Fidelis. All of this was ratified by Clement XIV in the Bull, "Altitudine Divinae Bonitatis," adding these privileges for future times, namely, that we grant the Prefect, in addition to the use of pontifical vestments, which he enjoys according to the present state in the aforementioned Collegiate Church, which we have declared to be a Royal Chapel, to wear a mantel and a vestment of violet color in ecclesiastical functions and in private processions. However, due to the overthrow of public affairs, in the year 1805, the Cisalpine Republic suppressed the Collegiate, attaching the goods of the Church to the public treasury, leaving only the Prefect to provide for

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the care of souls, which had long been attributed to him. Among so many changes in public principalities, it is not without controversy whether the Church of St. Fidelis has retained the title of Chapel Royal.

[*Latin ed. p. 172*]

172 MILAN. It is established that, under the Kingdom of Italy established by Napoleon I, a certain church of Saint Gotthard, located within the Royal Palace, was subject to the Aulic Chapel. Nevertheless, the present Church Prefect maintains that the church of Saint Fidelis retained the same title. His arguments, although not entirely convincing, at least clearly demonstrate that even now the King of Italy enjoys the right of patronage over said church, and, at present, with the office of Prefect vacant, a priest must be appointed in it by the Ordinary. After the collegiate church of Saint Mary of Scala was suppressed, and the Prefect, no longer surrounded by a college of canons, began to perform the sacred functions with pontifical insignia, as if this were contrary to the law, it seemed to displease both the Chapter of the Cathedral Church and the Archbishop. In truth, Archbishop Cardinal Gaisruk, after having, through tolerance, permitted the use of pontifical insignia to Prefect Visconti, forbade their use to his successor, Giulio Ratti, in accordance with an intention already expressly manifested in letters dated September 7, 1831. The Prefect, in obedience to the Archbishop's will, protested against this prescription, partly through the use of pontifical ceremonies, and partly by preferring certain pontifical insignia in the more solemn functions. In a full vindication of these rights, the same Prefect, in the year 1851, petitioned the archiepiscopal curia of Milan for the recognition of his privileges; and finally, in the year 1893, the present Church Prefect brought the matter before the Sacred Congregation of the Holy Office, seeking recognition and confirmation of this privilege, only for use within the church, not outside, and on certain solemn days, and for a few occasions. The Synoptical Advocate, recalling the most generous concessions of Clement VII and Clement XIV, pointed out that such privileges can only be revoked by him who *QUAERUNT BONUM PRAEPOSITO*.

[*Latin ed. p. 173*]

MILAN. It is held, or by his Successor: for the causes by which something arises, must be dissolved by the same causes. Therefore, it is established by law that an inferior law cannot abolish or revoke a superior law (Clement, cap. "Cum inferior de maior, et obed." God. I, on duty, presents the form). Therefore, the order of the Archbishop of Milan, in the year 1831, given to the Prefect Julius Ratti, concerning the institution of the Prefectural benefice of St. Mary of Scala, namely, that pontifical privileges should no longer be used in the future, has no validity. For the Archbishop, attending to the law of the Pontiff, exceeded the limits of his own jurisdiction. This is

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what the laws and doctrine unanimously proclaim and decree. The judge of the Holy Roman Rota states that if a decree extends beyond jurisdiction, it does not deserve execution and can be safely disregarded (Civ. Cast. Nullitatis, March 27, 1816, before Serlupi). However, the Advocate continues, only the Roman Pontiff can grant a privilege, so that if someone, even if not a Bishop, acts as a Bishop. Only the Roman Pontiff can grant a privilege to a benefice or dignity, so that the holder of that benefice or dignity may perform those things that pertain to the higher Episcopal order. And the Prefect Visconti exercised pontifical rights, deriving his right from the Pontifical constitution, "In Supremae," of Clement VII, which granted the pontifical privilege to the Prefectural dignity of St. Mary of Scala, which he held at that time. Therefore, due to the lack of authority, the revocation order issued by the Archbishop of Milan to the Prefect Julius Ratti, concerning the institution of the Prefectural benefice, in the year 1831, lacks force. Even more so, because the privilege, by its very nature, was irrevocable in its essence. We are dealing with a privilege which is accessory to the right of patronage, established at the time of the erection or endowment of the benefice, granted not merely out of favor, but by reason of a contract, or at least by reason of a compensation, thereby creating a natural obligation. Indeed, the Advocate continues, considering the donation of temporal goods by the most excellent Prince, Pope Clement VII, the concession...

[*Latin ed. p. 174*]

174. IN MILAN. The Praepositura of St. Mary of Scala, enjoying pontifical privileges, obtained this through [action]. From the preamble of the Constitution, "In Supremae," it is clearly stated that "Catholic Princes, desiring this, and offering suitable assistance for this purpose, are considered to deserve special thanks and favors from us." The Orator notes that the Fathers of Trent, having this natural obligation before their eyes, proclaimed that "it is not just to deprive legitimate patrons of their rights, nor to violate the pious will of the faithful in their institutions" (Session 25, chapter IX). To this, the patron Francis Sforza added a new endowment of one hundred ducats annually to the Benefice of St. Mary of Scala, so that, by the authority of the Supreme Church, it might be declared a distinguished institution. He requested it on the basis of this donation, and he obtained it on the basis of this donation. Therefore, the patronage seems to have been reconstituted through this new endowment, and the favors granted on the occasion of this reconstitution, by pontifical authority, form a law attached to the institution, which, as the Most Holy Council of Trent proclaimed, it is not just to violate or abolish. However, the reason that the Archbishop of Milan, from the beginning of the dispute, assigned was that Pope Clement XIV had intended to honor the Chaplain of the Prince through this distinction; but this office ceased from the time that the Emperor appointed Ordinary Chaplains for the time being, both in Milan

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and in Venice, a claim that is completely unfounded. The pontifical privilege is not repeated from the concession of Clement XIV, who confirmed a pre-existing privilege. Then, the Orator denies that the quality of a court chaplain was actually taken away from the Praepositus by the subsequent nomination of the Archbishop of Milan and the Patriarch of Venice. The quality of a court chaplain, he says, did not belong to the Praepositus by reason of his personal office; it belonged to the Church, of which he was the head and rector. For the Church had been elevated to the status of a court chapel, and because of this elevation, the rector of the Church received a lasting quality, as long as the Church remained in the same status. The Archbishop should have demonstrated that the Church of St. Mary of Scala had lost its status.

[*Latin ed. p. 175*]

MILAN. Seventeen royal chapels have lost, as one could logically conclude, the status of a royal chaplaincy. However, this cannot be asserted, for, apart from documents, there are monuments that demonstrate that the status or quality of a royal chapel was never lost. Indeed, new tombs have been constructed, containing the remains of royalty; expenses have been incurred up to the year 1845 by the imperial or royal administration for sacred functions; anniversaries, solemnly celebrated each year, have been established and are to be observed perpetually. Moreover, the same patron observes, the Church of St. Gottardo was designated as a royal chaplaincy; this does not preclude the other; for the designation of one does not necessarily imply the revocation of the other, unless expressly stipulated by a new designation. Could not the Prince, if he wished, appoint more chaplains for himself? Furthermore, the argument concerning the cessation of pontifical privileges, due to the destruction of the Chapter of Canons, rests on a less solid foundation, according to the opinion of the orator. Indeed, it is a universally accepted doctrine that the mere fact that a chapter ceases to exist does not necessarily mean that it is to be considered completely extinct, "but if a chapter should fail due to the death of canons, or another similar cause, from which it ceases to be a collegiate body in fact, it nevertheless remains such in name." Barbosa, *lib. 2 Iur. Eccl. univ.*, cap. 6, no. 9. "However, the number of three canons is sufficient to constitute a collegiate body... and if they withdraw, or at least at the present time there is no collegiate body, it is still sufficient for it to be considered a collegiate body." Felin, *in cap. accedentes*. Innoc, *in Cap. postulasti*, with others, as cited by the Rota, and followed in *Cremensi*, February 20, 1622, before Rambaldo. Furthermore, the orator continues, a rule has always been maintained in canon law, that a civil suppression is nothing more than a spoliation, and cannot in any way be considered as the extinction of a collegiate body. It is sufficient to cite Pitius, who, in *Discep. Eccl.*, *lib. 1*, disp. 8, examining whether collegiality can be lost through

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non-use, distinguishes two cases: "either collegiality has failed in...".

[*Latin ed. p. 176*]

176 MILAN. The Church remained extinguished by the authority of the superior, the cause being known, and then it was said that it no longer endures; for just as a college was established by the authority of the superior, so too it can be extinguished and removed by the same authority, or it may have failed and ceased through some accidental circumstance, such as the death of the canons or the oppression of enemies, and in such a case, collegiality is always considered to endure in essence, even if in actuality or use, for a very long period of time, as is distinguished after Glossa, in chapter concerning the statute on Election, in VI. Barbosa, *De officio et potestate Parochi par.*, 1, chapter 2, n. 2. Thus also Baldi, in *Marg. ad Innoc.*, at the word *Civitas*, where he says: "City, colleges, church, all these things can be destroyed by the authority of the superior, the cause being known, and then they lose all the privileges of the city and the college; but if they are oppressed by brigands, robbers, or tyrants, and are captured and destroyed, a monastery, church, or city, nevertheless, lives in a certain sense, and there exists, so to speak, a soul without a body, and retains all its privileges... And the reason for the difference is this, because when it is destroyed by law, the title is annulled, but the calamity of events does not take away the title or the name." With all this, the secular, long-standing, and uninterrupted observance is added. At present, the Praepositural benefice is conferred after the presentation of the patron, as it was conferred from the beginning of the foundation and in the subsequent times, as the head of the Chapter. This means that no change in status has occurred concerning the consistency of the benefice. The present Praepositus was instituted to the Praepositural benefice after the royal presentation of the year 1870. But the exercise of the right of patronage could not be understood if the benefice did not exist. Consequently, it follows necessarily that he has not lost the pontifical privileges, as if a law actually attached to the erection or endowment were to endure perpetually, according to the words of the Constitution, *In Supremae*, of Clement VII, namely: "We perpetually establish and ordain that the modern and existing Praepositus shall wear the pallium and rochet, like Bishops, and also..."

[*Latin ed. p. 177*]

MILAN. 177. The Orator believes that it does not impede, that the use of the privilege, from the year 1831 to the present, if anyone had wished to object, that a tacit renunciation was alleged. For affirmative privileges, which yield to the detriment of no one, are never lost through mere non-use. And it is the common opinion of the Doctors (Engel, book 5, Decretal, title 22, number 19; Pirhing, book 5, Decretal, number 176; Reiffenstuel, book 5, Decretal, number 787; Basseus, verb. Privilegium). The reason is that mere

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non-use is an act of free will, which does not induce prescription or renunciation. For the force of a privilege is not given by prescription. Although, if it were given, it could never be verified in this matter, according to the authority. The Prelate Ratti and his successors retained several things, namely, the singing of Mass with two ministers playing the organ, the exposition of the pastoral staff and mitre before the altar during solemn functions, and similar things, manifestly demonstrating that they never had any intention of renouncing the pontifical privileges. Furthermore, the petition of Prelate Ratti in the year 1851, requesting the restoration of certain things, first to the Archbishop, and then to the Most Holy [Pope], which, although it did not achieve the desired effect, seems sufficient in itself to interrupt any prescription.

THINGS FAVORABLE TO THE ARCHIEPISCOPAL CURIA. On the other hand, the Vicariate Capitular of the Milanese Curia has raised several objections to the requested restitution and confirmation of the privileges. Firstly, it denies that the Church of Saint Mary of Scala still retains the title of Chapel Royal, as openly stated by the administrators of the Church Fabric in a supplication presented to the Holy Father in the year 1852. Furthermore, the Milanese Curia, in its vote transmitted on March 28, 1894, fully approves the letters of the Archbishop of Milan, dated by Cardinal Lambruschini in the year 1852, in which he states that he fully approves the actions of his predecessor, who, in the year 1831, when conferring the parish of Saint Fidelis upon the priest Giulio Gratti, forbade him from wearing pontifical insignia during the sacred functions.

[*Latin ed. p. 178*]

178. In Milan, through the unction of the entire chapter, following the death of all the capitulars of Saint Mary's Scala, it was declared that the quality of the Provisor in the Head of the Chapter was extinguished, and therefore, the privilege of pontifical insignia, which had been granted only because of this quality, was also extinguished by Clement VII. Therefore, the Milanese Curia did not declare the privilege of pontifical insignia to be extinguished because of the suppression of the chapter, an act carried out by civil authority; but because of the death of all the capitulars, since, according to the prescription of the Sacred Rites of September 27, 1659, the pontifical functions could no longer be celebrated with solemnity. The same capitular vicar recounts that, already in the year 1883, when the Provisor petitioned the Sacred Congregation of Rites for the confirmation of his privileges, the deceased Archbishop, when questioned for information and his opinion, preferred to refrain from responding, so that the matter might be forgotten, considering the restoration of the privileges to be very inopportune. Furthermore, expressing his opinion in the aforementioned petition, he adheres to the concept, which has been unusual in the Milanese Curia since the year 1831. He also notes that, due to the diminished revenues

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of the Fabric, the Church had almost become incapable of providing for the expenses necessary for the use of the pontifical insignia, especially because it was necessary to increase the number of clergy to serve the Church. Then, he adds that, due to the royal patronage, and in addition to these political and religious circumstances, it could happen that access would be opened to less worthy individuals. Regarding the opinion of the royal Patron, the denial of the privilege could not be a cause for discrimination: for when the King was asked, at the request of many from the parish of Saint Fidelis, to support with his authority the petition for confirmation of such a privilege from the Apostolic See, he replied with a brief letter: "nothing." Finally, the capitular vicar concludes his petition with the highest praises, proclaiming the current Provisor to be fully worthy of the pontifical insignia, since he has deservedly earned the best in every part of the Church, to whom no honor should rightly be denied, if the question were about his person, but not about the dignity of the parish Provisor.

[*Latin ed. p. 179*]

MILAN. 179. Even the Archbishop of Milan was consulted regarding his vote, who, having recently entered the diocese, perhaps considering himself to lack sufficient knowledge of such a long-standing controversy, rather than offering judgment for one side or the other, readily submitted the matter to the definitive judgment of the Sacred Congregation. Indeed, in a letter dated January 2, 1895, he wrote: "I myself received letters from the parish priest, which I now submit to Your Eminence, although it is clear that the use of the aforementioned privileges has been withdrawn for serious reasons. Therefore, with all due diligence, I will embrace and implement the resolution issued by the Sacred Congregation." With these matters explained, the following question arose: Does the parish priest of the church of Saint Mary in Scala, in the city of Milan, have the right to perform marriages according to Pontifical law?

RESOLUTION. The Sacred Congregation, after examining the matter on April 27, 1895, decided to respond: Negatively.

LYONS. DISPENSATION FOR MARRIAGE. April 27, 1895. Session 24, Chapter B, concerning marriage dispensations.

SUMMARY OF THE CASE. Margaret, of the Archdiocese of Lyons, having reached the age of 25, on November 24, 1892, entered into a legitimate marriage with George, who was 32 years old, in the parish church. On the first night of their marriage, the newlyweds experienced conjugal relations, but the husband, according to the testimony of the wife, was unable to consummate the marriage, despite repeated attempts. Attempts to complete the marital act were repeated several times during the first four months of

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their marriage, but, it appears, due to the husband's...

[*Latin ed. p. 180*]

180 LYONS. Concerning the case of a woman seeking an annulment due to her husband's impotence, she is always innocent. Margaret recounts how this unfortunate condition caused great harm to her health, and therefore, in June of 1893, having left her marital home, she returned to her mother's house, absolutely refusing to live a marital life with an impotent husband. After several months from the aforementioned separation, Margaret appealed to the Holy See, earnestly requesting a dispensation from a marriage that had been contracted but not consummated.

A SYNOPTIC DISCUSSION: DEFENSE OF THE WOMAN. The advocates chosen by the plaintiff, in the first place, refer to Margaret's oath, which supports the lack of consummation of this marriage. Indeed, she swore in court with great sincerity that the marriage had not been consummated, and throughout her testimony, she consistently affirmed what she had stated in the petition submitted to the Holy See, namely, that she had never been united with her husband in the flesh. Furthermore, these advocates argue, this confession alone from the woman is almost sufficient for the determination of the case: for it is not a simple and bare statement of fact, but is surrounded by circumstances such that a reasonable doubt about its truth cannot be admitted.

Indeed, what does that worried woman intend by that account, so quickly and in such haste, and in her very naiveté, after the first wedding night, concerning the lack of consummation of the marriage due to George's impotence? What do those effusive complaints to her other relatives about the same misfortune intend, at a time completely unsuspected, when Margaret was not even considering seeking a dispensation from the marriage? Furthermore, do not all these things reveal that the aforementioned Margaret's confession is true, and free from any collusion? Moreover, the truth of such a confession gains even greater strength and force from the great consent and mutual benevolence with which the marriage had begun; therefore, the advocates argue, not a change of heart, not discord, and certainly not the flourishing age of the woman, 24 years old, are...

[*Latin ed. p. 181*]

LUGDUNUM. 181. Neither the beauty of the woman, nor the sweetness and gentleness of her character, were able to prevent the man from cohabiting with his wife; but the entire cause of this event must be attributed to the impotence of the man. Furthermore, according to the advocates, the man's obstinacy is a tacit confession, as is held in law; therefore, everything that has been stated by the wife concerning this matter should be considered, as if tacitly confessed by the man, as the Holy Congregation

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has frequently taught; for in similar cases, dispensation from marriage has been granted to wives who have not consummated the marriage, due to the obstinacy of the husband. Thus, in Lugdunum, dispensations for marriage were granted on September 7th and July 22nd, 1822; in Versailles, in July 1891; in Warsaw, on September 1st, 1894, etc. These intrinsic characteristics of the truth are further confirmed by the testimony of seven witnesses. Moreover, not one of these is found to raise any doubt about the singular virtue of Margaret, and the truth of her statements, and therefore, complete trust must be placed in her. Furthermore, the advocates argue, is it not certain that this event did not result in the consummation of the marriage, if we add the moral certainty of the man's impotence to consummate the marriage? Indeed, this is most clearly evident from the great hesitation of George on the eve of the marriage ceremony, when, as is well known, the minds of the betrothed are usually excited by joy and happiness. They confirm this from the testimony of the wife, who, as previously stated, swore in court that George attempted to consummate the marriage on the night following the wedding, and that he failed; and they further confirm this from the fact that, even though for about four months she willingly submitted to her husband for the purpose of marital intercourse, she was nevertheless unable to achieve consummation; and they also confirm this from the confession of the man himself, not only regarding the lack of consummation of his marriage,

[*Latin ed. p. 182*]

182 LUGDUNEN. But also concerning the state of her impotence, and its characteristics, which possess no slight weight and force, since no one is considered to lie to their own detriment. Several other sworn witnesses corroborate all of this; therefore, the advocates conclude that, spontaneously, the woman's virginal seal flowed, remaining intact, and that Margaret, the unpolluted virgin, departed from the embrace of so many husbands. They strive to demonstrate this truth, as it were, with the light of the midday sun, through an examination of Margaret's body, which, according to the Canons and the Benedictine Constitution, as well as the instruction of the Holy Congregation, they declare to have been happily completed. This, then, concerning the non-consummation of the marriage; turning to the causes for the dispensation, the advocates present these: the first is the doubtful or probable impotence of either spouse, which, being alone and permanently present, is considered the most just, the most serious, and sufficiently, and indeed abundantly, sufficient to obtain a dispensation from marriage. See Sánchez, book 2, dispute 16, paragraph 6; Cosci, book 1, chapter 16, paragraph 197, and book 3, chapter 2, paragraph 386. - There - "when impotence is presented as a motive, and a cause for a gracious dispensation, it does not require certain and conclusive proof, but it is sufficient that said impotence be so probable that the Supreme Pontiff may consider it

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true, and be moved to grant the dispensation." To this cause, they add another of no less gravity, namely, the danger of incontinence. For the case concerns a woman of 27 years of age, in the prime of her life, a woman desirous of conjugal life, to whom, if this remedy is not provided, she would undoubtedly be exposed to the danger of incontinence, which, frequent experience teaches, often leads to sins and scandals. Therefore, to prevent this distinction for eternal salvation, the prelates unanimously teach that a dispensation must be granted before scandals occur, especially Cosci, book 3, chapter 2, number 107; - there - "It is not to be waited for until scandals occur in order to provide a remedy; but when they are foreseen, or feared, it is the duty of the Supreme Moderator of the Church to provide for the impending evils."

[*Latin ed. p. 183*]

LUGDUNUM. 183. To these, they add the consideration arising from the impotence of George. See *Disputationes*, 21, n. 60 and following, vol. 3, part 2, and *Disputationes*, 7, n. 76, 77, vol. 3, part 1. Indeed, all the parents of Margaret maintain unanimously that such a dispensation is necessary, and they proclaim it. Finally, Margaret herself vehemently desires the dispensation because of the impotence of her husband, from which she cannot be healed, and because it is the cause of her infirmity and unhappiness.

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENT. The defender of the sacrament, on the contrary, observes first of all how, after a period of peaceful cohabitation for several months, the marriage is considered to be consummated by the most violent presumption of the law: and it is sacrilegious to speak of a relaxation of the conjugal bond, unless there is doubt about the consummation of the marriage, as the Sacred Congregation has constantly taught, and especially in Milan, or Valencia, on March 18, 1722: "Although a dispensation is a grace, it is not applicable unless there is certainty that the marriage is only in fact and not consummated; therefore, this cause for a dispensation is more rigorous and requires more abundant proofs than that for nullity." But in the present case, the defender argues, neither the asserted impotence of the husband, nor the integrity of the wife's virginity, nor the lack of consummation of the marriage, has been demonstrated to the fullest extent of the law. The arguments presented, whether to confirm one side or the other, are neither irrefutable nor conclusive: indeed, many of those which are absolutely necessary for ascertaining the truth, and which are prescribed by law, the opposing party, to whom the burden of proof clearly belongs, has not even bothered to produce, and the judge and the defender of the sacrament tacitly overlook this. To demonstrate this, the defender refutes the depositions of the individual witnesses. Furthermore, the defender of the marriage notes that the aforementioned witnesses are often all brought in by the plaintiff. Indeed, in any trial, the depositions of witnesses brought in by the plaintiff are not considered valid,

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unless they are first examined by witnesses from the other side.

[*Latin ed. p. 184*]

184 LUGDUNEN. latos. Propter hanc causam, in citata Instructione Sacrae Congregationis diei 22 Augusti 1840, monetur: « Procedendum erit ad examen septimae manus, hoc est septem propinquorum ex utroque latere ». Nec obicitur, ait ipse, quod hoc debeat scribi culpae Georgii, qui ad iudicem rescribit se non velle adesse iudicio super hanc rem. Etenim primo, Georgius haud erat in iudicium vocandus, quasi ageretur solummodo de suis protuendis iuribus, sed praemonendus etiam erat, quod res est de sanctitate sacramenti in discrimen adducta; et proin ipsi praeprimis onus incumbebat facta, prouti iacent, denuntiandi ad iudicem et designandi testes ad quos factorum notitia pervenisset. Deinde, si Georgius, hac non obstante monitione, contumax perstitisset, iudicis atque sacramenti vindici s erat testes de re instructos ex officio inducere. At nec unum, nec alterum praestitum est. Praeterea, urget defensor, inspectio in mulieris corpore, expleta non est iis adhibitis cautelis, quae a lege praescriptae sunt, ut exploratores nec decipi, nec decipere queant. Monet enim Sánchez De Matrim, lib. 7, disput. 108, n. 8: « Saepe oculi et manus (explorantium) falluntur: eo vel maxime quod feminae multis utantur fraudibus, quibus virgines appareant ». Et Zacchias quaestiones medicae, legales, lib. 3, tit. 2, tradidit: « Quoniam interdum pro veritate medicus interrogatur, ut de integra, seu violata virginitate sententiam ferat, ne ex simulata per haec medicamenta decipiatur in iudicando, paucula haec quae sequuntur animadvertere debet. Et primo debet... non ea solum, quae ex mulierum vasorum constitutione desumuntur perpendere, sed alia quoque, quae ex mammarum, pectoris, ventris, totiusque denique corporis statu elicere licet... » At praesenti in casu, medici cognitores muliebria tantummodo considerarunt, praetermissa aliarum mulieris corporis partium investigatione. Ne medici cognitores, qui ceteras corporis partes, praeter muliebria, non considerant, decipiantur, timendum est non solum ob memoratum fraudis periculum, sed etiam ob alias causas omnino naturales, quas recenset antedictus Zacchias lib. 4.

[*Latin ed. p. 185*]

LYONS. Title 18, section 2, question 1, number 28 and following. "Concerning the integrity of the hymen, even when the woman is corrupted, it is clear, as I have explained elsewhere concerning those who are imperforate: for a virgin can be defiled, and even conceive, without the hymen being broken, as some of the aforementioned authors conclude." And here, the speaker, with his pen flowing, recounts, along with the cited author, the various ways in which this can occur. Furthermore, the aforementioned Instruction of August 22, 1840, states: "The judge shall appoint at least three midwives, who shall be instructed by at least two experts, one a physician

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and the other a diligent surgeon, concerning the recognition by sight and touch in the examination of women... After this examination, each midwife shall separately report on the signs of virginity or corruption resulting from the examination, whether certain and what signs and arguments of an intact or corrupted virginal membrane remain, and whether any deception could have been employed to simulate virginity. Then, based on these matters, more precisely, they shall testify in answers to questions, which shall be closed and sealed, and which the defender of the validity of the marriage shall present. Then, the experts shall be subjected to a formal examination, and their judgment shall be sought regarding the testimonies presented by the midwives." (1)

No one fails to see the immense difference, the advocate for the marriage argues, between the examination prescribed and carried out by the aforementioned Instruction of the Sacred Congregation, and the revision conducted by experts in Lyons. For while at least three midwives and at least two experts are required to carry out this most difficult task, only two physicians, knowledgeable in the matter, have concluded the case present. And this is not enough: there is such agreement between the testimony of one physician and the testimony of the other, in periods, in the members of periods, and even in the very words, that it seems like a miracle, unless one has the testimony of the other before his eyes when he writes it. This is most wisely prohibited in the cited Instruction of the Sacred Congregation: "The examination of the body must be carried out separately by each person." Indeed, the aforementioned Instruction is found in Volume I, page 439.

[*Latin ed. p. 186*]

186 LUGDUNUM. The midwife, or rather, the attendant, shall not enter the chamber in which the woman remains to be examined, before another, having completed the examination, has departed from the same chamber. For, if the aforementioned attendants enter the aforementioned chamber simultaneously, they will remain there together and depart together, in the presence of the woman, so that, as experience teaches, they will discuss the matter with one another, and will manifest their judgment under the influence of human considerations and other very serious inconveniences; and then they will present the report of the completed examination. To avoid all these things, it is prescribed that each midwife or expert shall give and write down her judgment, not only in the absence and ignorance of the woman being examined, but also in the absence and ignorance of other attendants, so that each one may give her judgment and testimony concerning the completed examination before knowing the opinion of others. With these considerations in mind, it was deemed necessary to examine the following question: Whether it is permissible to consult with the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated, in a particular case. RESOLUTION: The Sacred Congre-

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gation, after deliberation on April 27, 1895, decided to respond: Affirmative. —— FROM THE HOLY CONGREGATION FOR RITES. The cult of confirmation has been bestowed from time immemorial upon the Servant of God, Thaddeus Machar, Bishop of Cork, now Blessed. Thaddeus Machar, born in Ireland around the middle of the fifteenth century, from a noble lineage, cultivated his childhood and later years with the study of literature and piety, and endured many persecutions from envious men; until, by Pope Innocent VIII, he was appointed to the governance and administration of the dioceses of Cork and Glouche, which were united, in the year 1490.

[*Latin ed. p. 187*]

From the Sacred Rituals, 187: Having suffered the plundering of his goods by enemies of the Church's liberty, he was also prevented from approaching his flock by its pastor. Therefore, he went to Rome, and presented his case to the Pontiff, the Vicar of Christ, and to Peter's successor, as to the Supreme Guardian and Defender of the entire Christian flock. The Roman Pontiff, a man distinguished by dignity, doctrine, and virtue, received him most graciously, and, granting him what he requested according to his right, issued letters by which he might repel the injustice of the unrighteous possessors of his goods and defend himself and his Church. Assuming the guise of an exile and a pilgrim, following the footsteps of Christ who suffered for us, as he was returning to his homeland from Rome, he stopped at Eporediae, which had once seen the passing of the Apostle of the Irish. There, as a poor man, humble, and unknown to all, he was received into the public hospice for pilgrims. But, weary from a long journey and afflicted by a grave illness, he peacefully surrendered his soul to God before the dawn of October 24th, in the year 1492, and, as is said, immediately a wonderful light illuminated the bed on which his remains lay. Therefore, the Bishop of Eporediae, Nicholas Garigliatti, going to the hospice for pilgrims, recognized Thaddeus at once, by his appearance, signs, and other documents found in his pack. Together with the assembled clergy, he carried the sacred remains, adorned with the garments fitting for the occasion, in solemn procession to the Cathedral Church, and there, after a proper religious funeral, he laid the sacred body in the very urn which stood beneath the principal altar, and which also held the relics of Saint Eusebius, adding the inscription: "Of the Blessed Thaddeus, Bishop." The entire people acclaimed him as a Blessed. These most auspicious beginnings of public and ecclesiastical veneration were soon followed by an increasing fame of his sanctity, his virtues, and his miracles, which, from his death to the present time, have added the firmest strength and growth to this veneration. However, since this veneration for the Servant of God, Thaddeus Machar, had been offered to him without interruption from his death, but had not yet been recognized and approved by the Apostolic See, the Reverend present Bishop of Eporediae instituted

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a process concerning this matter, and rendered a favorable judgment. Therefore, the Reverend Doctor Michael Antonini, promoter of this cause, and also in the name of the Reverend Ordinaries of Eporediae and Cork, as well as the Reverend Chapters and Clergy of both dioceses, humbly requested confirmation of this judgment from the Holy See. Hence, from the Eminent and Reverend Lord Cardinal Vincent Vannutelli, Promoter of the Cause, in the Ordinaries.

[*Latin ed. p. 188*]

188 From the Sacred Congregation of Rites, at meetings held at the Vatican on the designated day, the following question was proposed for discussion: "Whether the opinion of the aforementioned Reverend Bishop of Ivrea, concerning the case excepted from the Decrees of the Blessed and Holy Pope Urban VIII, should be confirmed in this case, and to that effect?" And the Eminent and Reverend Fathers, entrusted with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and the written statement of the Reverend Father Augustine Caprara, Promoter of the Sacred Congregation of the Holy Office, decided to respond: Affirmative, that is, the opinion should be confirmed. August 13, 1895. Subsequently, a report on these matters was made to His Holiness, our Lord Pope Leo XIII, by the undersigned Secretary of the Sacred Congregation of Rites, and His Holiness approved and confirmed the Decree of the aforementioned Sacred Congregation on the 26th of the same month and year. LUCIDUS M. CARDINAL PAROCCHI, L. & S. ALOISIUS TRIPEPI, Secretary of the Sacred Rites Congregation. —.<X3§£>o. FROM THE SACRED CONGREGATION OF INDULGENCES: A Decree whereby to all the Christian faithful who recite, before or after Holy Communion, the Eucharistic Rite – "Adoro te, etc." – is granted an Indulgence of one hundred days. TO THE MOST BLESSED FATHER: The Reverend Father Tommaso Tinti, Prior of the Venerable Convent of Santa Maria Novella of the Order of the Preachers in Florence, humbly requests that the same Indulgence be extended to all the faithful who, before or after Holy Communion, recite the following "Eucharistic Rite of Saint Thomas Aquinas," which is granted to the priests who recite it before or after the celebration of Holy Mass, namely, the Indulgence of one hundred days. And so forth. EUCHARISTIC RITE OF SAINT THOMAS: I adore you, hidden God, Who are truly present in these forms: My whole heart is entirely subject to you, Because, contemplating you, I am completely consumed. I humbly adore you, O God, Present in this Sacrament: My whole spirit is entirely subject to you, And in contemplating you, I am consumed.

[*Latin ed. p. 189*]

The senses of sight, touch, and taste are deceived in you, but faith is achieved through hearing alone: I believe whatever the Son of God has

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said; nothing is truer than this word of truth. Whoever is deceived by sight, by touch, and by taste, for him faith is more secure through hearing alone. I believe your words, O Word of the Lord; nothing is truer, eternal truth, than You. On the Cross, only the Divinity was manifest, but here both the Divinity and humanity are hidden: Yet, believing and confessing, I ask for what the penitent Thief asked. On the Cross, only as God; as man and God, You who have hidden Yourself; therefore, I believe and confess You, both as man and God, and I also ask for what the penitent Thief asked You. I do not behold the wounds, as did Thomas, but I confess You as my God; make me always believe in You more, to have hope in You, to love You. As Thomas did not see, so I do not see the wounds of Your side; nevertheless, my Savior, without seeing You in this veil, I believe in You: increase in me faith, hope, and love. O memorial of the death of the Lord, Living Bread, which gives life to man: grant that my mind may live of You, and may always taste Your sweetness. Memorial of Him who died for us, Living Bread which nourishes our life, may my soul live of You, and may always feel Your sweetness within it. O merciful Pelican, Jesus, Lord, cleanse me, a sinner, with Your blood, whose single drop has such power that it can save the whole world from all sin. Merciful Pelican, Jesus, Lord, purify me, a sinner, with Your blood; a single drop of Your blood has such value that it can save the world from every sin. Jesus, whom I now see veiled, I pray that it may come to pass, which I so desire: that, beholding Your face revealed, I may be blessed with the sight of Your glory. O Jesus, whom, hidden, I seek, I pray, satisfy my burning thirst, so that, seeing Your unveiled face, I may always be blessed with the sight of Your glory. Amen. Amen. On the 10th of June, 1895. From the Audience of the Most Holy. His Holiness Pope Leo XIII, having referred me, the undersigned Secretary of the Sacred Congregation of Indulgences, graciously granted the grace, in the terms of the concession, for Priests. L. & S. Fr. MARCOLINUS CICOGNANI, Procurator General of the Order of Preachers, Sacred Congregation of Indulgences, Secretary. The present decree was presented to this Sacred Congregation for Indulgences and Sacred Relics on the 17th of June, 1895. L. & S. ALEXANDER, Archbishop of Nicomedia, Secretary.

[*Latin ed. p. 190*]

190 APPENDIX II EXHIBITING THE ACTS OF THE APOSTOLIC SEE, WHICH ARE EITHER ALREADY ESTABLISHED OR WHICH HAVE RECENTLY COME TO THE ATTENTION OF THE MODERATOR OF THE EPHEMERIDES. S. C. of the Council, July 5, 1629. — Concerning the translation of the Tridentine Council into other languages. Regarding the article submitted by the Congregation of Propaganda Fide concerning the order of the Most Holy Divine Name: "Whether translations of the Holy Council of Trent into other languages are permitted, or rather, whether they are included in the blessed decree of Pope Pius IV, which prohibits

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such interpretations and glosses"; the Sacred Congregation of Cardinals of the Council of Trent judged that the translation of the same Holy Council of Trent from the Latin language into French, or into other languages, is prohibited, and therefore it should be communicated to the Congregation of the Indies, so that it may entirely prohibit such translations that have been printed without special authority from this Holy Apostolic See. From the letter of the Sacred Congregation of Propaganda Fide, May 21, 1856. — (to the Apostolic Vicar of Tunkin, Central). Concerning the pious meditations recited by girls in churches. The Bishop of Tricomia (Apostolic Vicar) reported, according to ancient custom, that it had arisen that, even now, daily prayers are recited alternately by men and women, both in the church and outside, and that some years ago, the custom had developed that while the priest celebrates Mass, three or four girls, already of marriageable age, recite or chant aloud pious meditations suited to each part of the Mass. The Prelate stated that this practice greatly helps Christians to restrain wandering thoughts and to listen to Mass piously and devoutly; nevertheless, it is disapproved by many as being contrary to the words of the Apostle: "Women, be silent in the churches," to which the Sacred Congregation adhered in the instructions given to the Apostolic Vicar Sutchuen, April 29, 1784, and printed at the end of the Synodus Sutchensis, prohibiting "that virgins should presume to preach the word of God, or to teach, or to publicly read, or in any way announce, in a public assembly of men." This was confirmed in the year 1844. Nevertheless, the Prelate inquired, whether this practice should be entirely abolished by the authority of the Sacred Congregation, since it was perhaps not considered expedient for all, especially in other missions; or rather, to—

[*Latin ed. p. 191*]

APPENDIX H. 191 It should be taught, or permitted, that these pious meditations be recited by children, or by some catechist, to prevent all offensive remarks. After seriously considering all that the esteemed Prelate had noted, the Most Reverend Fathers judged it advisable to write: — In Fermo, it should be ensured, by a more prudent method, that the alternating recitation or singing, according to custom, is maintained, while observing the decrees of the years 1784 and 1844, so that this is done only by children or teachers. Decree of the Sacred Congregation of the Propagation of the Faith, November 20, 1838. — Concerning the transition from one rite to another among the Eastern Christians. Since the Sacred Congregation of the Propagation of the Faith has recognized that it would be very beneficial for the proper governance of the Church in the Eastern regions, and that a certain rule should be established regarding the transition from one of the Eastern rites to another: in the general meeting held on September 10, 1838, presented by the Most Reverend and Illustrious Lord Joseph, Cardinal of the Holy Roman Church, Mezzofante, it was decided that the following

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should be decreed. Some of the Eastern Christians, such as the Armenians and the Maronites, use unleavened bread for the Eucharist with the Latin Church; others, namely the Melchites, Chaldeans, Syrians, and Copts, use leavened bread. Therefore, no one should be allowed to pass from the rite in which unleavened bread is used to the rite in which leavened bread is used, without the approval of the Apostolic See; and the same should be observed regarding the transition from the rite in which leavened bread is used to the rite in which unleavened bread is prescribed. However, if there is no difference in this matter of the bread used in the Eucharist between the two rites being exchanged, the consent of two bishops, from whom and to whom the transition is made, will suffice. These regulations are established for those who already profess the Catholic faith; but with regard to heretics and schismatics who return to the bosom of the Church, it was decided that it should be permitted for them to embrace the Eastern rite that is more pleasing to them. This decision of the Sacred Congregation was reported to His Holiness Pope Gregory, of Divine Providence, Pope XVI, in an audience on the 16th day of the same month and year, and His Holiness graciously approved it and ordered that it be observed in all things. From the Constitution of Benedict XIV, July 26, 1755. — Regarding the mixing of rites. According to canon law, it is indeed established that the Eastern and Greek rites should not be mixed with the Latin rite, as can be seen from the entire Decree of Celestine III in Gonzales, chapter 2, "De temporibus Ordinationum," and in the Decree of Innocent III, chapter 1, "Quanto," "De consuetudine," chapter 1, "Quoniam," "De officio Iudicis Ordinarii," and in the Decree

[*Latin ed. p. 192*]

192 APPENDIX II. From the letters of Honorius III, chapter concerning the celebration of the Mass; however, it cannot be affirmed by any law that the mixing of rites is forbidden solely because an Armenian, Maronite, or Greek, according to their own rite, performs the Sacrifice of the Mass or other ceremonies in a Latin church, or conversely, a Latin performs the same in an Eastern church, provided that there is a legitimate reason for this. The mixing of rites would certainly be forbidden if a Latin priest were to consecrate in leavened bread, so as to administer the Eucharist consecrated in leavened bread to Latins. The same would be said if Easterners who have not embraced the custom of unleavened bread were to perform the Divine Liturgy with leavened bread, and distribute the sacred Eucharist to their people in leavened bread. The mixing of rites would also be forbidden if a Latin priest were to celebrate Mass sometimes according to the Latin rite, and sometimes according to the Greek rite: or if a Greek priest were to celebrate Mass sometimes according to the Greek rite, and sometimes according to the Latin rite. This is forbidden in the Constitution of St. Pius V, which begins: "Providentia," and is found in volume 21, page

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4, paragraph 2, newly printed in Rome; where all the permissions that had previously been granted to some priests concerning this matter are entirely revoked. This Constitution of St. Pius V is also consistent with our preceding statement (Etsi pastoralis) § 7, no. 10. However, it was granted to the priests of the Society of Jesus who preside over the colleges of Eastern nations established in Rome, and who, embracing the institute of that Society, had passed from the Greek rite to the Latin rite, as we indicated above, that they might sometimes celebrate the Sacrifice of the Mass according to the Greek and Eastern rite; this was done, as we foreshadowed, so that the students, who are to profess the Greek and Maronite rite, might learn to celebrate the Mass according to that rite, and to perform the divine services throughout their lives according to the same. But the special circumstances of this quite singular case clearly demonstrate that it cannot be cited as an example for obtaining similar permissions. Therefore, although Cardinal Leopold Kollonitz, predecessor of Clement XI, explained to us that it would be very beneficial to the Catholic religion if it were permitted to Latin missionaries to celebrate Mass according to the Greek rite in Hungary, whenever it seemed necessary, leaving them, however, with the freedom to return to the Latin rite; nevertheless, that Pontiff, considering that each one ought to remain in his own rite according to the canonical sanctions, and that it is not permissible for a priest to celebrate Mass sometimes according to the Latin rite, and sometimes according to the Greek rite, refused to grant the permission that was requested by the aforementioned Cardinal, as is evident from his letter in the form of a Brief, which he sent to the same Cardinal on May 9, 1705, and which is contained in volume 1 of the selected Epistles and Briefs of that Pontiff, printed by the press, page 205.

[*Latin ed. p. 193*]

193 APPENDIX II. Sacred Congregation of the Propagation of the Faith — Congregation General, December 10, 1838. Doubts regarding the administration of the sacraments by Latins towards the Orientals.

1. Whether Latin missionaries can administer the sacraments of Baptism, Extreme Unction, and Marriage to Orientals according to the Latin rite in Oriental churches, for example, in the case where a Latin missionary would perform the duties of a parish priest in those churches.

2. Whether the same missionaries can administer these same sacraments to Orientals according to the Latin rite in Latin churches.

3. Whether missionaries can administer the aforementioned sacraments to Orientals, observing the Oriental rite, preserving the rite to which the sacrament is administered.

4. Whether missionaries can, in any case, administer the sacraments to Latins according to the Oriental rite, for example, to bless a marriage in which one party is Latin and the other is Oriental.

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5. Whether Latin missionaries, performing sacred functions in an Oriental church, can introduce elements of the Latin rite into the Oriental rite, for example, to recite prayers in Latin after the Oriental chant during the Benediction of the Most Holy Sacrament, and so in other matters.

Response: To 1: Affirmative. To 2: Affirmative. To 3: Negative. To 4: Negative. To 5: Negative regarding the sacred liturgy; in other matters, custom should be observed.

Sacred Congregation of the Propagation of the Faith — Congregation General, July 25, 1887 — Apostolic Delegation of Mesopotamia. Regarding the dispensation from fasts and observance of feasts for servants and workers residing with or employed by lords of different rites.

1. Whether, for servants and workers residing with or employed by lords of different rites, a special dispensation is necessarily required for dispensing from fasts and the observance of feasts, or whether an explicit faculty to dispense is sufficient, and whether the common provisions of the law regarding family members are not sufficient.

2. Whether there is a different reason for dispensing with servants and workers who ordinarily reside in the homes of their lords or provide services to them, and a different reason for those who only occasionally serve.

3. Whether Oriental tertiary servants living permanently in the houses of missionary congregations or Latin prelates, under the obedience of their superiors, enjoy the privileges mentioned in the Acts of the Orders, Volume XXVIII, page OCGXXVIII, number 13.

[*Latin ed. p. 194*]

194 APPENDIX II. To the Regular clergy, the following has been granted and approved, namely, that they may be able to conform in all things to the Latin rite, and especially to receive the Most Holy Eucharist and the Paschal Sacraments from their own Superiors.

4. By which Bishop are Eastern faithful, deprived of their own pastors, to be considered to depend, if, within the limits of their own diocese, they enjoy the ministry of a Latin missionary as a parish priest; by the Eastern Bishop, or by the Latin Bishop? And what if they are outside the limits of their own diocese?

5. Whether those Eastern faithful who are placed under the care of missionaries must, without distinction, conform to the fasts and feasts of the Latin rite, or of their own rite.

6. a) Whether it makes any difference or not regarding the distinction between unleavened and leavened bread, so that a Greek, for example, deprived of his own priest, may receive the Most Holy Eucharist from a Latin missionary under unleavened bread, even though there is a priest of another rite present in the same city who consecrates with leavened bread.

b) Whether, if to the same Greek, as has been answered by the Sacred

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Congregation, freedom is granted to receive Communion under leavened bread, this freedom applies to a Communion that is merely devotional, or also to a Communion that is obligatory.

c) Also, if the same Greek prefers to receive the Eucharist in the form of leavened bread, whether this depends on the jurisdiction of the parish priest of the Eastern rite who uses leavened bread, regarding the very act of Communion, or whether, notwithstanding the Communion, he always depends on the Latin superior.

Answers:

To question 1: Affirmative, to the first part; Negative, to the second.

To question 2: Negative, if in both cases the table is common.

To question 3: Negative regarding the Sacraments; regarding the rest, provision is made in the first answer.

To question 4: By the proper Eastern Bishop.

To question 5: Negative, to the first part; Affirmative, to the second.

To question 6 a): The pastoral instruction of the Most Holy Benedict XIV should be observed, in which it is permitted for Eastern faithful to receive Communion according to the Latin rite only as a concession, namely, when they can scarcely receive it according to their own rite. It will, however, be fitting that Eastern faithful who use leavened bread, and who are deprived of their own rite's priest, should receive Holy Communion from priests of another rite who consecrate with leavened bread.

To question 6 b): Negative, to the first part; Affirmative, to the second, provided that he can scarcely receive it according to his own rite.

To question 6 c): Negative, to the first part; Affirmative, to the second.

[*Latin ed. p. 195*]

APPENDIX II. 195 S. C. de Prop. Fide — C. G. 25 Julii 1887 — Deleg. Ap. Mesopotamiae. Concerning wives who follow the rite of their husbands. The decree of the Holy General Council of the year 1759, which permits "that the wives may follow the rite of their husbands," provided that the wife is not of the Latin rite, is clear and has not been denied by anyone; nevertheless, concerning the extension and practical interpretation of such a permission, various questions arise which it is permissible to explain.

1. Whether, in the case proposed, there is a difference between "following" the rite, as used in the present decree, and "choosing" and "adopting" words that are found elsewhere for an identical case.

2. Whether the permission granted to a married woman to follow the rite of her husband is equivalent to a true change of her former rite, so that she is bound by all the obligations of the marital rite, even after the death of her husband.

3. Whether a woman who was unable or unwilling to follow or adopt the

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rite of her $\text{husband, can nevertheless conform to it on fast days and feast days, either out of necessity or without necessity. What, therefore, is the necessity required, and what is permitted?}$

4. Whether a woman who, at the time of the marriage, completely ignored that it was permissible for her to follow or adopt the rite of her husband, and after learning of the error, declares that she would have gladly adopted it if she had known, and now desires to do so, can that woman enjoy this permission as if it were newly granted, and subsequently follow and adopt the marital rite, with this new declaration.

5. Whether, recently and repeatedly, as some assert, the Holy See has declared that a woman who has followed the regular rite of her husband can return to her former rite, or can even be forcibly returned to it.

R. To 1. Negatively. To 2. Affirmatively. To 3. Negatively, without an Apostolic dispensation. To 4. Affirmatively. To 5. It is necessary to consider each case individually.

[*Latin ed. p. 196*]

196 LETTERS from His Holiness Pope Leo XIII to His Eminence Cardinal Mariano Rampolla del Tindaro, concerning the public clamors made in Rome on the twentieth day of September, 1895.

My Lord Cardinal. The unusual political manifestations, of which the last echo has scarcely faded from the streets of the city, prompt Us to address to you some words on this matter, not so much to alleviate Our saddened spirit, but rather to bring to light the gravity of the event, and the intentions that inspired it.

Indeed, that sense of humanity and decency which even dwells in minds inflamed by passion, led Us to hope that at least some consideration would be given to Our advanced age. But it was decided to proceed more roughly; so that We have been brought to the point of being almost immediate witnesses to the apotheosis of the Italian revolution, and to the consequent stripping of the Holy See.

Accustomed, with God's help, to enduring insults and readily granting forgiveness, We overlook the affront to Our person, especially since the piety of the Catholic people has spontaneously come to alleviate this sorrow of Our spirit; and among these, Italy distinguished itself with generous protests and most precious demonstrations of affection.

[*Latin ed. p. 197*]

The offense to the rights of the Apostolic See, and the evident intention of perpetuating, rather than resolving, a conflict, the calamitous effects of which no one can measure. The gravity of the fact, evident in itself, is further illuminated by the confessions of those who were the instigators and praisers of it. By glorifying, as has been seen, the events of the year 1677, they aimed above all to establish the fruits of their conquest, and

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to make it understood to Italy and the world that the Roman Pontiff, as far as they were concerned, must now submit to servitude, without any hope of redemption. And this is not all. They also wished to take a further step towards an essentially anti-religious ideal. For the ultimate goal of the occupation of Rome, we do not say in the minds of all who cooperated in it, but of the sects that were its first instigators, is not, or at least not entirely, the establishment of the political unity of Italy. No: that act of violence, which has few examples in history, was intended, in the decrees of the sectaries, to serve as a means to be a prelude to a more sinister proposition. If they extended their hand to tear down the walls of the civil metropolis, it was done in order to better breach the sacerdotal city: and to carry out the intention of attacking the

[*Latin ed. p. 198*]

198 The spiritual power of the Popes began to be undermined by the demolition of this earthly stronghold. Indeed, when they imposed themselves upon the Roman people, this people who remained faithful to its prince until the very end, resisting vigorously against powerful and persistent temptations from outside, they brought with them the firm intention of changing the destiny of the favored city, of transforming it, of returning it to paganism: this was what was called in their jargon, to give life to a third Rome, from which a third civilization would radiate as from a center. And in truth, more than seems to be the case, efforts have been made to carry out this disastrous plan. For five lustrums, Rome, looking around, sees the opponents of Christian institutions and beliefs dominating the field; every most wicked doctrine is spread abroad; the person and ministry of the Vicar of Christ are impudently despised; in place of the Christian faith, the right to free thought and belief is put; and in place of the Chair of Peter, the seat of the Masonic sect is established. And precisely to this nefarious collection of ideas and deeds, it has recently been attempted to give the appearance of law and stability, through the sanction of a new law and the clamorous demonstrations that followed, led openly by the sect hostile to God. Is this perhaps the triumph of the Italian cause, or rather, the proclamation of apostasy? Justice will be the final triumph.

[*Latin ed. p. 199*]

Ah, Liguori, or rather, the event of apostasy? Justice is certain of the triumph of the Annal, just as Rome is certain of the immutability of its high destiny. But meanwhile, it is overwhelmed, and through it, the conspiracy of perverse sects and the misguided actions of those who favor them advance. And what benefit does this bring to the nation? The acquisition of Rome was proclaimed to the Italian peoples as the dawn of health and an omen of future prosperity. We will not inquire whether events have fulfilled this promise with regard to material goods. But it is certainly true

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that, through the acquisition of the City, obtained by arms, Italy has been divided in spirit, rather than united. Furthermore, it is a fact that during this time, all kinds of greed became more daring; the licentiousness of morals spread widely, favored by public law; and as a consequence, the religious faith diminished; the number of those who despise human and divine laws increased; and extreme factions, increased in number and strength, became furious legions, conspiring to overthrow the civil and social order from its foundations. And amidst this increase of so many evils, this sect does not cease, but intensifies the war against that divine institution, in which it should certainly remain, just as Rome is certain of its immutable and divine destiny. Meanwhile, however, it is overwhelmed; and the effects of this destiny are hindered by the wicked conspiracy of sects, and by the unjust actions of those who favor them. What benefit does this bring to the Italian nation? The occupation of Rome was proclaimed to the Italian peoples as the first light of salvation, and as an omen of future prosperity. We will not inquire whether events, with regard to material goods, have confirmed the promises. But it is certainly true that, through the acquisition of the City, obtained by arms, Italy has been divided in spirit, rather than united. It is also a fact that during this time, greed of every kind became more daring; the licentiousness of morals spread widely, favored by public law; and as a consequence, the religious faith diminished; the number of those who despise human and divine laws increased; and extreme factions, increased in number and strength, became furious legions, conspiring to overthrow the civil and social order from its foundations. But amidst this flood of so many evils, this sect does not cease, but intensifies the war against that divine institution.

[*Latin ed. p. 200*]

200 Letters offer the hope of the greatest and most secure remedy. We wish to say to the Church, and particularly to its visible Head, to whom, along with the civil principality, autonomy was taken away, a thing no less fitting to the dignity of the pontiff than necessary to the freedom of the apostolic ministry. And it is vain to resort to legislative expedients: no manner of legal provisions will ever confer true independence without a certain territorial jurisdiction. The condition which they claim to have guaranteed to us is not the one that is due to us and that we need: it is not true independence, but only apparent and ephemeral, because it is subject to the will of others. Whoever grants this kind of independence can also take it away: it was sanctioned yesterday, and it can be abolished tomorrow. And were not these very days marked by the demand from one side, and the threatening suggestion from the other, of the abrogation of those things which they call the guarantees of the pontiff? But threats, sophisms, and impudent accusations of personal ambition will not succeed in silencing within us the voice of duty. What is, or rather, what ought to

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be the true guarantee of papal independence was foreseen from the time when the first Christian Caesar realized that it was necessary to transplant the seat "tutum inferre ferocius pergit, in quo validissimi omnium ac tutissimi praesidii repériundi spem reponi oporteret," that is, to a place where the most valiant and safest defenses could be found. The Church, indeed, and especially its visible Head, to whom, along with the civil principality, autonomy was taken away, is a thing no less fitting to the dignity of the pontiff than necessary to the freedom of the apostolic ministry. It is vain, however, to seek remedies in civil law; for no legal statutes can confer upon us true and complete freedom without a certain degree of territorial immunity. That very condition of life which these people claim to have entirely guaranteed to us is not, in fact, the one that belongs to us and that we need. It is not true freedom, but only in appearance, and moreover, uncertain and unstable, because it is subject to the will of another. Whoever grants this kind of freedom can also take it away: it was sanctioned yesterday, it can be destroyed tomorrow. Indeed, on these very days, the abrogation of those things that have been established by law to protect the pontiff has been impudently criticized from one side, and threateningly suggested from the other. But threats, sophisms, and impudent accusations, as if we were pursuing empty glory, will not be able to silence within us the voice of our apostolic ministry.

[*Latin ed. p. 201*]

From that time until the ages closest to us, no one was ever seen residing in Rome among those who held sway over the affairs of Italy. Thus, the state of the Church was born and flourished, not through the work of fanaticism, but through the arrangement of Divine Providence, embracing within itself the best titles that can render legitimate the possession of a principality, namely, the grateful love of peoples benefited, the law of nations, the spontaneous consent of civil society, and finally, the suffrage of the ages. And the scepter held by the Popes did not hinder their pastoral ministry. Indeed, these our predecessors bore the scepter, who shone forth for the sanctity of their lives and the excellence of their zeal. And they themselves were often called upon to settle the most difficult disputes; who victoriously opposed the exorbitant power of the emperors; who, in perilous times, saved Italy's treasure of faith; and who, from morning to evening, spread the light of Christian civilization and the benefits of human redemption. And if today, despite the unfavorable and harsh conditions, the Papacy continues its course among the reverence of the nations, it is not least due to this human support, but truly to the assistance of heavenly grace, which never fails.

What, then, is the true safeguard of the freedom of the Papacy? It could already be understood at that time, when the first Christian Emperor, having abandoned Rome, decided to transfer the seat of the empire to Byzan-

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tium. From then until these times, no one of those who held power over the affairs of Italy has been seen residing in Rome. Thus, the civil dominion of the Church began and flourished, not through the force of mad fury, but through the counsel of Divine Providence, embracing all that is best and which constitute the legitimacy of any principality; namely, the grateful affection of peoples benefited, the law of nations, the spontaneous consent of civil society, and finally, the suffrage of the ages. And indeed, the scepter in the hands of the Popes did not hinder their episcopal ministry. Indeed, those of our predecessors bore the scepter, who shone forth for the sanctity of their lives and with a brilliant and ardent zeal for the salvation of the Christian Republic. These very ones were also frequently called upon to settle the most arduous disputes of the emperors; who, by overcoming the most invincible resistance, opposed the insane arrogance of the kings; who, in perilous and terrifying times, preserved Italy.

[*Latin ed. p. 202*]

202 Letters to the supreme Christian priesthood. Was it perhaps the imperial persecutions that brought about the marvelous growth of the young Church? Events preserved the treasure of the Faith, and from the rising of the sun even unto the west, they spread the light of the Christian institution and the benefits of human redemption. And even today, although it finds itself in difficult and arduous times, it continues to advance its path among obedient nations, so that it is not subject to the failings of any human support. But we attribute this to the heavenly grace, which never fails the supreme Christian priesthood. Does anyone attribute the marvelous growth of the adolescent Church to the attacks of the Roman emperors? We wish that these things might be better understood by the practical wisdom of the Italians. We do not speak of those who are led astray by erroneous doctrines or the bonds of sects; but of others, to whom, although free from those bonds, and not blind followers of those doctrines, the passion for political novelty obscures their understanding. Let them see how dangerous and foolish it is to oppose the true designs of Divine Providence, and to persist in a discord that benefits only the most audacious factions, and even more so, the enemies of the Christian name. The fact of having been chosen among many to guard the apostolic see was a most singular privilege and a great fortune for...

Haec omnia ab Italis consilio atque experientia praeditis melius intelligi velimus. Haud Nobis sermo est, de iis qui sive falsis imbuti doctrinis, sive inipiae sectae vinculis obstricti viam deviam sequuntur; sed de coeteris, quibus, quamvis horum vinculorum immunes sint, neque coeci illorum dogmatum sectatores, inordinatus tamen rerum novarum amor obnubilât intellectum. Videant hi quam periculosum sit atque insanum sapientibus divinae Providentiae consiliis obsistere, et in dissidio, quod solum pessimis audacissimarum factionum propositis, praecipue vero christiani nominis

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hostibus pro-

...all of which we wish to be better understood by the Italians, endowed with counsel and experience. Our words are not for those who, whether imbued with false doctrines or bound by the chains of a pernicious sect, follow a crooked path; but for others, to whom, although free from these bonds, and not blind followers of those doctrines, the disordered love of novelty obscures their understanding. Let these see how dangerous and foolish it is for the wise to oppose the plans of Divine Providence, and to persist in a discord that benefits only the most audacious factions, and especially the enemies of the Christian name.

[*Latin ed. p. 203*]

Our peninsula has known the ire of God: and every page of its history testifies to the abundance of benefits and the increase of glory that it has always received from the constant care of the Roman pontificate. Would its character perhaps have changed, or its effectiveness diminished? Human things change, but the beneficial virtue of the supreme magistrate of the Church comes from above and is always the same; moreover, since it is established to last as long as the ages, it follows with loving vigilance the course of humanity, and does not refuse, as its detractors dream, to conform, as far as possible, to the reasonable needs of the times. If the Italians, lending a docile ear, were to draw courage from their ancestral traditions and from the awareness of their true interests to shake off the Masonic yoke, we would open our hearts to the most joyful hopes concerning this land, so dearly beloved by us. But if the opposite were to happen, it grieves us to say it, we would foresee only new dangers and greater ruin.

With an outpouring of particular graces, may you persevere.

That our peninsula was chosen from among thousands to be protected by the Apostolic See, was a singular privilege, and the greatest benefit to the Italian nation: indeed, each page of Italian history openly testifies to the abundance of benefits and the increase of glory that Italy has received from the constant care of the Roman Pontificate. Has its character truly changed, or its effectiveness diminished? Indeed, human things change; but the beneficial virtue of the supreme magistrate of the Church is from Heaven, and always remains the same: moreover, since it is established to endure perpetually on earth, it follows with loving vigilance the course of humanity; and it does not refuse, as its detractors claim, to conform, as far as is permissible, to the just necessities of the times. If the Italians were to offer us docile ears, and were to draw courage from their ancestral traditions and from the awareness of the power of reason, to shake off the yoke imposed upon them by the perfidious, we would conceive the sweetest hope concerning this land, which is most dear to us. But if the contrary were to occur, it is painful to say, we would foresee only new dangers and greater ruin.

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Apostolic Benediction.

[*Latin ed. p. 204*]

204 We impart to you, Most Reverend Cardinal, our special paternal benevolence, and bestow upon you the Apostolic Blessing. From the Vatican, 8th of October, 1895. LEO XIII, POPE.

LETTERS from His Holiness Pope Leo XIII, by which are granted several indulgences for the 15th of December of this year, on which day the jubilee feast of Saint Joseph, Spouse of the Virgin Mary, is solemnly celebrated. To all the faithful of Christ who shall read these letters, greetings and the Apostolic Blessing.

Since, as has been reported to Us, in many dioceses throughout the Catholic world, the jubilee feast of Saint Joseph, Spouse of the Virgin Mary, is to be solemnly celebrated this year on the fifteenth day of the month of December, and since We desire nothing more than that, especially in these serious times for the Church of God, the piety of the faithful towards their heavenly Patron may be aroused and may increase day by day, We have judged it fitting, on this most auspicious occasion, to open the heavenly treasures which the Most High has entrusted to Our care. Therefore, confident in the mercy of Almighty God and in the authority of the Apostles Peter and Paul, We grant, with all Our paternal love, to all and each of the faithful of both sexes, who are truly penitent and have confessed, and who have received Holy Communion, that on the aforementioned fifteenth day of December, or on one of the seven days immediately following, of their own choosing, they may visit any church in which the feast of Saint Joseph the Patriarch is celebrated, provided that they have attended five novenas or three tridua of prayers in the days preceding, and that they have devoutly visited their own parish church, and there they shall offer pious prayers to God for the concord of Christian princes, for the eradication of heresies, for the conversion of sinners, and for the exaltation of the Holy Mother Church; We grant them, in the Lord, a plenary indulgence for all their sins, with complete remission. To the same faithful, who, with contrite hearts, shall participate in these novenas or tridua of prayers, We grant two hundred days of the penitences that have been prescribed to them, or of any other penitences that they may owe, according to the form of the Church.

[*Latin ed. p. 205*]

LETTERS 205, we grant a dispensation. We grant that all and each of these indulgences, remissions of sins, and relaxations of penances, may be applied even to the souls of the faithful detained in Purgatory, as a form of suffrage. These are valid only for the present occasion. We desire that the same faith be given to these present letters, whether transcribed or printed by the hand of a public Notary, and signed, and to a person duly

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constituted in ecclesiastical dignity, as would be given to the present letters themselves, if they were exhibited or shown. Given at Rome, near Saint Peter, under the Fisherman's seal, on the twenty-fourth day of September, in the year 1895, in the eighteenth year of Our Pontificate. LEO PP. XIII. FROM THE CONGREGATION CONCILII NANCEIENSIS ET TOULLENSIS, regarding a dispensation for marriage, on the 25th of May, 1895, Session 21, Chapter 1. Concerning Maria, a woman aged 29 years, who on the 10th of December, 1890, was joined in marriage to Cornitus Rogerius, who at that time had reached the age of 39 years. The marriage was celebrated before the proper parish priest, with all due solemnities observed. However, an unfortunate omen foreshadowed the subsequent events of this marriage. For, as the woman confesses, during the time of their cohabitation, they attempted the marital act on two occasions, but were never able to complete it. When the husband attributed the impossibility of the act to a defect in the wife, she consulted a skilled physician, who made a slight incision in her, to render the conjugal acts easier. But afterwards, the work...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 206*]

206. OF NANCY AND TOULOUSE. After the marriage was completed, because the husband did not attempt further intercourse, the woman, as she herself recounts, considered him to be impotent. Meanwhile, Roger, if we are to believe Mary, began to treat her harshly and even to beat her, until on February 1, 1891, he ordered her to return to her father's house. Then, a few days after the separation, Mary presented supplications to the Supreme Pontiff, praying for a dispensation from the marriage, which was valid but not consummated. The Bishop, to whom the case was referred according to custom, along with the authority to delegate, arranged for the proceedings to be conducted by a delegated judge. This judge examined the woman and seven witnesses on her side under oath, and received testimonies from a midwife, which concerned the examination of the woman's body. The husband, although repeatedly summoned properly, always proved to be contumacious, and finally, through letters sent to the judge, he asserted that the marriage had not been consummated. At the order of the Holy Congregation, a new examination of the woman was ordered, which, even this time, does not seem to have been conducted with the utmost thoroughness. Furthermore, the physician who had previously performed the examination was excused, and the testimony of the seventh witness, concerning the woman's hand, was omitted. The Tribunal asserts that the new examination was properly conducted, and that obtaining a new deposition from them would not be possible without great difficulty and scandal, since there is no reason to doubt their good faith and sincerity; furthermore, the husband was summoned to appear and to designate

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witnesses not once, after the first proceedings, but always.

A SYNOPTIC DISCUSSION. The theologian said that two things must be investigated: first, whether there is sufficient evidence, for the purposes of legal proceedings, that the present marriage is not consummated; and second, whether sufficient and suitable reasons are provided, so that the Most Holy Father may deign to grant the requested dispensation. Regarding the first point, the consultant continues, according to the theologian's opinion.

[*Latin ed. p. 207*]

In the dioceses of Nancy-Toul, it is known, through reliable sources, namely, from the declarations of the spouses, from the confirmation of a seventh witness, and from a medical examination, that a marriage has not been consummated. Legally and under oath, the woman testified that the marriage had not been consummated, because there was only physical contact between the bodies, without the man's erection, nor the emission of seed. The husband believed that a defect in his constitution hindered the consummation of the marriage; but a surgeon, with a minor incision, removed a small defect, which he himself had previously been aware of. Afterwards, the husband never requested the marital debt; and therefore, I considered him to be impotent. However, the other spouse, through a written declaration transmitted to the ecclesiastical judge, stated: "Before these witnesses, I, Roger, solemnly testify and affirm that the marriage contracted with the virgin Mary, in the parish church, in the year of grace 1890, on the tenth day of the month of December, has not, at that time, nor in any way since, been consummated; I am convinced that the girl remains a virgin." We have here a declaration of the lack of consummation, stated in unambiguous terms, by the husband, whose testimony, although given in an extrajudicial manner, should nevertheless be given the utmost importance, in my opinion, because it was written by a noble man holding a public office. As for the reasons for the lack of consummation, they should be investigated from the wife, as the husband himself believes, as he writes to the Vicar General of Paris. Therefore, in the essential points, the declarations of both spouses are in agreement, namely, that they have made repeated efforts to consummate the marriage, but without success, so that the girl has always remained untouched, and the cause of this is either the absolute or, at least, the relative impotence of one of them. Furthermore, I believe that any suspicion of collusion should be entirely dismissed, and indeed: because after a month of cohabitation, during which time, neither seems to have considered requesting a dispensation, the spouses never lived together; because the husband appears to care little about obtaining such a dispensation, as he is content to appear before

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the judge, or to produce witnesses, consistently.

[*Latin ed. p. 208*]

208 The Nanceiensis and Toulensis [dioceses] refused [to grant a dispensation]; because, finally, the statements given by each of the spouses, as they are laid out, do not agree at all. However, from Chapter V concerning frigidity and enchantments: "If they have never known each other, both must confess," this must be confirmed and strengthened by "the seventh witness, touched by the sacred Gospels of relatives or neighbors of good reputation." The witnesses of the seventh witness, on the part of the woman alone, declared under oath, almost with the same words, these three things: that they had heard that the marriage in question was not consummated; that this happened because of the probable impotence of the man; that the woman is truthful and worthy of all praise for her piety and honorable conduct. Having considered all of these things properly, a moral judgment regarding the lack of consummation of the marriage in this case seems to be quite safe and firm. However, so that nothing may be lacking in a matter of such importance, and according to the law and the practice of the Church, one must finally resort to another argument and support, which is obtained from the examination of the woman's body. Indeed, in this matter, the woman herself, having undergone an incision by a surgeon, in order to be more fit for intercourse, was subjected to a special mandate of the Sacred Congregation [of the Holy Office], so that everything concerning this matter should be observed with the utmost care, and the surgeon himself was legally heard, who performed the incision on the girl. And all of these things, as the records attest, were strictly observed. After the required bath, the woman was diligently examined by three successive matrons, skilled in the art of midwifery, who then conferred with two doctors about each matter. Before the judge, the midwives declared under oath, with one voice: that the hymen of the woman was intact, resisting, and not torn; that the incision made by the surgeon was, in fact, extremely small, barely exceeding a thousandth of a meter; and that it had nothing in common with the specific tearing that would have occurred if intercourse had been consummated; therefore, the woman should be considered a virgin, and her marriage had never been consummated. The midwives confirmed the testimony of the doctor.

[*Latin ed. p. 209*]

NANCY-TOUL 209. Hitherto recounted testimonies, the Consultor stated, are of such a nature that, if I am not mistaken, the Sacred Congregation can, with prudence, pronounce: "It is established that the marriage is consummated." Once a marriage has been proven to be unconsummated, which is the first and most important reason that moves the Pontiff to dissolve the conjugal bond, it appears that there is

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a probable defect in the bond itself, or a doubt concerning it, due to the probable impotence of the marriage; this is the common opinion of the authors. Coscius, Book 3, chapter 2; Pignatelli, etc. Furthermore, in this matter, there are many things that strongly suggest the impotence of the man; namely, the testimony of the wife and of a perfectly reliable witness; the declaration of the doctor Poincarré; indeed, even the confession of the husband himself. Does not the accused confess that he has reached this point, due to excessive abuse of venery, to the extent that he is now incapable of procreation? Indeed, it seems that this can be further inferred from the testimony of the seventh witness, who states that even the prostitutes themselves spoke of his impotence: "The public women themselves would have spoken of his impotence." The second cause for a dispensation is drawn by theologians from discord and aversion of the spouses; Sánchez, *De Matrimonio*, Book 2, dispute 16, number 4. This, in the present case, is understood to be such that it can be said that it has hardly ever been absent. The witness testified under oath that from the beginning, she was afflicted by her husband with constant and harsh reproaches, and even with beatings and blows. Finally, I believe that a third cause should be invoked, drawn from the danger of incontinence and the peril to the soul, which could threaten the woman, since we are dealing with a woman of flourishing age, recently orphaned and deprived of means to support herself. The importance of this cause is well known in such cases, as can be seen in Sánchez, *De Matrimonio*, Book 12, dispute 15; and Coscius, *De Separatis*, Book 1, chapter 16.

OPINION OF THE CANONIST. It is to be noted that the process, although the Acts are in Volume XXVIII, page OCCXXVIII, 14.

[*Latin ed. p. 210*]

210 The laws of NANCY and TOUL concerning marriage are, in fact, very lenient. Very little is known about the preceding events of this marriage, so its history must be very brief. From the judicial confession of the woman, Maria, we learn that she entered into marriage with Roge on December 10, 1890, and that they lived together until February 1, 1891, on which day, the husband sent her back to her parents' home. According to the husband, a certain organic defect in the wife was the cause of the separation; the woman, however, alleges a different cause, namely, the husband's impotence. Maria affirms that she used all means to appease her husband's mind, and that she never gave him any cause for resentment, assertions which, incidentally, are confirmed by the man in various of his letters. Whatever the true causes may be, the man sent Maria back to her parents' home after a short time, where she willingly and spontaneously remained, without any desire to return to her husband's home. Therefore, the question here is not of nullity due to impotence, but of a dispensation. Indeed, it is always advisable, however probable the existence of that

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impediment may be, to grant a dispensation, since it is far more difficult to prove perpetual impotence than the "lack of consummation," which is the principal matter in dispensations. In the present case, the testimony of experts absolutely excludes impotence on the part of the woman, and although it is very probable on the part of the man, this probability is derived from presumptions and motives that do not suffice to constitute full proof, and I would even say, complete proof, as is required in such matters; whereas, on the contrary, probable impotence on the part of the man is of the greatest importance in cases of this kind, because the reasons that suggest it support the argument of lack of consummation, and because it can be a very valid reason for a dispensation, if it were a harsh and dangerous thing to force the woman to maintain perpetual continence, or to lead a life that would be both ridiculous and shameful, under the guise of marriage. Grave reasons are necessary, but it is sufficient that they arise from the common good, such as, for example, the danger of scandal arising from in-

[*Latin ed. p. 211*]

The bishops of Nancy and Toul [NANCEIENSIS ET TOULLENSIS] address the issue of a woman's continence, the vexations and odious marital relations arising from quarrels and other similar circumstances, which are exceedingly distressing in such a miserable marriage. On this matter, the Doctors [D.D.] are unanimous, especially the more recent ones, and Cardinal de Luca, in *De Matrimonio*, book 14, chapter 9, paragraphs 7 and 8, states: "It is the common opinion of the Canonists, which... the Roman Curia observes, that the Pope, for a just or honest reason, especially for reasons of hatred and animosity, can grant a dispensation regarding a valid marriage." It seems sufficient, moreover, when the spouses strongly dislike each other, as the scandal that can arise from the animosities between their relatives or blood relations is feared; Sánchez, *ad Tit.*, Disp. 16, paragraph 3. All of these points favor the petitioner in this case, and suggest a dispensation, provided that the marriage is "undoubted" to be unconsummated; for there is no power to grant a dispensation in marriages of the faithful that have been consummated: "for what God hath joined together, let no man put asunder." Therefore, the entire force of the argument will revolve around this: whether, despite approximately six weeks of cohabitation, it can be proven, and indeed is proven, that the marriage between Roger [Rogerio] and Mary [Maria] remains unconsummated. Regarding the possibility of proof in general, there can be no doubt. For if the husband's impotence is demonstrated by certain arguments, and at the same time it is established that the woman has remained chaste after entering the marital bed, the case is completely settled: it is also settled if, with equal certainty, it is established one of the two extreme conditions, namely, either the husband's impotence or the woman's virginity. This is derived from the

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Decree of Gregory VII, chapter *Proposuisti, de Probat.*: "A woman stated that she had not been known by her husband, nor could she have been known by him, which she proved by her own proper oath, as well as by the testimony of seven women, who, by examining her body, affirmed that she was a virgin, while the husband, by his oath, asserted the contrary. It seems to us, therefore, that the oath of the girl and the testimony of those seven women should be given credence." It is true that, in the newest law, more is required regarding matrimonial proceedings, as stated in the Constitution *Bene-*.

[*Latin ed. p. 212*]

212 The decrees of the NANCEIENSIS and TOULLENSIS tribunals, found in the instruction of the Sacred Congregation of the Council, 1840, and in other decrees of the Sacred Congregation, determine not only the form, but also the kind and probative force of arguments; but it is no less true that the Sacred Congregation and other tribunals, always preserving the essential elements and considering the truth of the matter, do not adhere rigidly to the number of witnesses, nor to the formalities under which testimony is usually obtained in legal proceedings. This practice, if ever permissible, is certainly permissible in an investigative process, which is not intended to be the basis for a judicial sentence, but simply to investigate the truth of a matter. The truth of the facts is the principal and sole object in such a process, and therefore it seems appropriate to admit any credible testimonies, even if they are deficient in some respects from the strict norm of the Constitution of Benedict XIV and the instruction of the Sacred Congregations. Indeed, a similar principle is established in the Constitution of Clement X, "Cum alias," concerning the process for proving the death of a spouse. In that Constitution, after mentioning certain testimonies or proofs from Chapter "Dominus" of the Second Book of Canon Law, and Chapter "In praesenti" of the same book, concerning marriages and betrothals, which, due to the infinite variety of circumstances, may sometimes be lacking, a certain relaxation is permitted, with these words: "However, if such testimonies cannot be obtained, the Sacred Congregation does not intend to exclude other proofs that may be admitted according to common law, provided that they are legitimate and sufficient." Therefore, after examining and weighing the evidence presented in the process, the consultant believes that the marriage in question remained unconsummated. This is primarily suggested by the judicial confession of Maria, who affirms both the fact of non-consummation and its cause. Maria affirms all of these things under oath, and her piety and all-around sincerity are proclaimed by all witnesses, without exception. Furthermore, when questioned by the defender of the marriage, she affirms "that she, for her part, used all means to soothe the mind of her husband" and "that she never gave her

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husband any cause for resentment"; are not these affirmations a clear and valid confirmation of the fact that she subjected herself to a painful and humiliating ordeal?

[*Latin ed. p. 213*]

The inhabitants of Nancy-Toul [NANCEIENSIS ET TOULLENSIS] were subjected to this [investigation], not for any other reason than to determine whether they were fit for the duties of marriage? The testimony of Mary regarding the lack of consummation is confirmed by what is read in a certain letter from Father Roger; and it is declared more clearly in a certain testimony from Roger himself. Regarding the fact of the lack of consummation, Roger speaks openly, not only in this testimony, but also in a letter addressed to His Excellency, the Most Reverend Bishop Joviot, Vicar General, and the Delegate Judge in the case, dated June 1, 1891. These [testimonies] are in agreement, in the essential matters, with the confession of Mary; for only a true man fears to confess his own impotence, and he tries to explain the matter through an indisposition, whether physical or moral, of Mary. However, it is not of great concern to us what the cause may be, if the effect, that is, the lack of consummation, is certain, and that it is certain appears from the statements of the spouses, especially of Mary, whose confession deserves all credibility, since it is clothed in legal conditions that compel assent. For the witnesses presented are suitable and, in the majority of cases, "greater than any exception," and all, with one voice, proclaim her to be pious, sincere, and absolutely incapable of perjury. Another argument is derived from the examination of the body, to which Mary willingly submitted; for if the signs of physical integrity are lacking, the matter is settled regarding the dispensation; if, on the other hand, these signs are found, they provide the most valid argument for the lack of consummation. Therefore, the very acceptance of the examination by experts is a favorable presumption for Mary, who underwent it not once, but twice. In both examinations, the woman was found to be a virgin, by the judgment of the obstetrician and the experts, after a final discussion at the marital home; and although, as has already been said, the prescriptions of the law were not strictly followed in the first, nor even in the second proceeding, the defects of that kind are not apparent, which admit of healing and deserve it, while the valid part of the process, or that which does not suffer from nullity, constitutes a true proof. The valid part is that which concerns the midwives. For they were chosen by the Delegate, Ridice, and not by the...

[*Latin ed. p. 214*]

214 The Nanceiensis and Toulensis [doctors] testified three times; they were "of good reputation, prudent, and skilled in their art and practice," as the Judge himself states, "they swore an oath to faithfully fulfill their duty, and each confirmed their testimony under oath." Indeed, from their own

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testimonies, two things are clearly established: 1. That Mariam is a virgin; 2. That a small incision made on the body has in no way erased the signs of physical integrity; for if the hymen remains intact, and the laceration, whatever its nature, is entirely different and distinct from that which would follow the consummation of marriage. These expert opinions were submitted to the doctors Vallois and Poincarré, who approved and confirmed them. These findings are taken from the first process; they are incomplete, but undoubtedly retain their truth. They are sworn testimonies from persons whose sincerity and knowledge leave no room for doubt; therefore, I have presented them as supporting evidence in favor of Mariam's confession. In the second examination of the body, a warm bath was used for three quarters of an hour, and the entire procedure took place in the presence of a designated matron. Then three midwives were called, two of those mentioned above, along with another. Their testimonies are more explicit, affirming the existence of the hymen and the natural height of the vagina, which, according to them, are two undeniable signs of virginity; they also affirm that the incision has in no way damaged the hymen. This judgment deserves even greater consideration, because, as far as the legal process is concerned, it ends here! What follows is irrelevant. In the records of the process, no sworn testimony from a doctor is found, nor a single word that explains this most serious omission! I speak not of the first, but of the second process, after the letters from the S. C. C. [Sacra Congregatio] were received. This is such a strange thing that I myself would rather suspect some error in the transcription of the records. Certainly, it is evident that witnesses, in any case, even expert ones, must be sworn, for an unsworn witness does not prove anything; or, if, by one of the thousand prejudices that abound in our age against things and persons ecclesiastical,

[*Latin ed. p. 215*]

The doctors of NANCY-TOUL, numbering 215, having refused to give testimony, either other witnesses must be sought, or at least the difficulty must be declared in the process. However, let us suppose that the testimony of the doctor Poincaré, duly subject to judicial conditions, is of the highest value. It proves the moral and physical integrity of Mary, and it proves the temporary impotence of Roger. In this regard, the testimonies of midwives, although they are proofs in themselves and are admitted as such in law and before the Sacred Congregation, nevertheless gain strength and maximum force from the independent testimony of a medical expert. However, if strict adherence to the Benedictine Constitution and the cited instructions is required, defects in the process would be a very harmful, if not destructive, cause; but on the other hand, since she is, in this regard, entirely free from blame, having faithfully fulfilled her proper duties by producing witnesses and undergoing examination twice, I believe that the process could be remedied with regard to these defects, and could proceed "having

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inspected the truth of the matter" to a final judgment. Chapter concerning Proofs admits the testimony of a woman, provided she has the testimony of seven other women who, through examination, have ascertained that she is a virgin, against a man who, even under oath, asserts the contrary. Here, the man has affirmed that the marriage was not consummated, and there is no fear of collusion between the parties, since he has refused to appear before the Judge or to produce witnesses at all. Furthermore, in addition to the testimony of the women, we have here the testimony of doctors, which is indeed extrajudicial, but for that reason is not deprived of all weight and authority in PRIVAS. Moreover, there is no suspicion regarding the sincerity of Mary, whose piety and religion are praised by serious priests who offer this testimony with a view to this cause, which they certainly would never have done if even a shadow of suspicion had existed. Considering, therefore, all the circumstances, both judicial and extrajudicial, it seems to me that the testimony of Mary deserves full credence, being so strongly confirmed by so many supporting elements; from which it may be concluded that the marriage was not consummated, and this because of the impotence of the man.

[*Latin ed. p. 216*]

216. The causes for the dispensation alleged by the Bishop of Nancy-Toul, namely, implacable hatred, and the apparent impotence of the man, are sufficiently evident from the statements, in which one can also discern alienation of spirit and aversion due to the character of the husband, and the reproaches and vexations which have made common life impossible. The matter has now progressed to the point that there is absolutely no hope of reconciliation between the parties, even if such a reconciliation could be achieved without scandal. Therefore, the causes are very serious, and since the non-consummation appears certain, I believe that application can be made to the Holy See for a dispensation from the marriage of Roger and Mary, formerly united in matrimony, which has not been consummated.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. The marriage, which Mary, aged 29, contracted with her husband Roger, aged 39, on December 10, 1890, is a work that remains imperfect. The newlyweds lived together as husband and wife until February 1, 1891, on which day Mary was sent back to her father's house by her husband. If you hear Mary, Roger is inept; if you hear Roger, Mary is inept. Indeed, the investigation was so superficial that it is not only unclear what prevented the marriage from being consummated, but also, which is most important, whether it was actually consummated in reality. The learned canonist consultant enumerates the flaws in the investigation. However, in order not to appear to be acting arbitrarily, I will be content to recall with the most learned jurist Paul Rubé in *S. Rot.*, decision 392, n. 27 et seqq., part 4: "When it is a question of dissolving a marriage, which is a great sacrament, all diligence

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and caution must be exercised, so that, as far as human frailty allows, all fraud and error may be excluded. Therefore, the Church has instituted such elaborate formalities before similar marriages are dissolved." Therefore, I cannot agree with the opinion of the most esteemed consultants, theologians, and canonists, but I insist that the acts of the process be completed according to the law. With these preliminary remarks, the purpose is to clarify the matter.

[*Latin ed. p. 217*]

NANCY-TOUL AND TOULOUSE, 217. A Doubt: Whether it is permissible to grant a dispensation from a marriage that is valid but not consummated in this case. RESOLUTION. After deliberation by the Sacred Congregation on May 25, 1895, it was decided to respond affirmatively, with a prior examination of the facts.

TOULOUSE. Regarding a dispensation from marriage. On May 25, 1895, Session 24, Chapter 1, Concerning Reforms. Mary, aged 22 years, and Charles Louis, aged 30 years, were married according to the form prescribed by the Council of Trent, on August 12, 1890, in the church commonly known as "de la Dourade," in Toulouse, from which both had derived their origin. This marriage had an unhappy outcome, since, as Mary testifies, when the husband refused to consummate the marriage, he began to despise his wife from the very first night of their marriage, and it appears that he abandoned her alone in an inn, intending to visit a certain mistress, who had followed him from Bayonne to Toulouse. From this arose quarrels and contentions between the spouses, and vexations, which the husband began to inflict upon his wife with great severity in Bayonne, to which he had returned. When Mary, as she herself recounts, reproached her husband for publicly frequenting the aforementioned mistress without shame, he revealed his resentment towards his wife. He frequently deserted the marital home for several days, falsely claiming that he loved her, and indeed, he often struck her cruelly, endangering her life. Finally, on July 30, 1891, having definitively abandoned his wife, he petitioned the civil tribunal for a divorce. When Mary learned of this, she also went to the tribunal and easily obtained a separation of body and goods on January 27, 1892.

SUMMARY OF THE FACTS.

[*Latin ed. p. 218*]

218 TOLOUSE. Subsequently, the actress, having lost all hope of reforming her husband, sent a petition to the Supreme Pontiff, earnestly requesting a dispensation from a marriage that had been contracted but not consummated. The opposing counsel argues that the evidence presented to prove the lack of consummation of his client's marriage primarily consists

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of the sworn testimony of the woman herself. When questioned by the judge, whether she could safely affirm that the marriage had not been consummated, Mary responded: "I maintain that our marriage has not been consummated." The counsel notes that Mary's testimony should be given full credence, as witnesses, including the parish priest, unanimously declare this to be true. Furthermore, the counsel continues, the actress's confession, which she made before the judge, is unanimously confirmed by all the witnesses. Moreover, the counsel argues, the fact that the husband, Charles, although duly summoned, refused to appear in court, and therefore no witnesses can be presented by him, cannot prejudice the plaintiff, who has legitimately brought the case before the court. Furthermore, the counsel continues, if any doubt were to remain regarding the lack of consummation of the marriage between Mary and Charles, that doubt would be completely dispelled if one were to consider the testimonies and reports of the midwives and medical experts, who, following all the prescriptions of the sacred canons, conducted a judicial examination of Mary's body. Having discussed the reasons for the lack of consummation of the marriage, the counsel then proceeds to address the reasons for the dispensation. The first reason for the dispensation, he argues, is the husband's persistent intention not to consummate the marriage, even though he has lived with his wife for several months. Thus, in her confession before the judge, the plaintiff admits: "The lack of consummation of the marriage must be attributed to my husband, the DEFENSIO MULIERIS."

[*Latin ed. p. 219*]

Toulouse, 219, who never asked me for that which I later learned to be the conjugal act; abstaining from this act, either because he did not want children, or because of a shameful illness, or because of the horror he manifested towards me, or perhaps because of the guilty relationships he maintained outside of marriage with other women." The second cause for the impossibility of reconciliation is, according to the petitioner, as all witnesses proclaim with one voice. The petitioner wishes to present a third cause for the dispensation, namely, the danger of incontinence, in which the petitioner, still of a young age, is most wretchedly involved. However, no one is ignorant that those who petition for a dispensation always seek spiritual benefit, and that this has always been considered a strong reason for granting the grace, as testified by Perez in *De Matrimonii Disputationibus*, 20, section 7, number 11, and as taught extensively by St. Pothinus and in numerous decrees of this Holy Congregation. To these reasons, the petitioner adds the most solid suspicion of the husband's impotence. The petitioner finds a final reason for the dispensation in Mary's insuperable aversion to resuming marital relations with Charles. And rightly so, since Charles has shown himself to be an enemy rather than a husband. It is sufficient to recall all those most grievous cruelties with which Charles

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afflicted his unfortunate bride, which have also been proven by the secular Tribunal of Bayonne. Finally, the advocate, defending Mary against the bonds of Toulouse, who, willingly admitting the lack of consummation of the marriage, wished that the Supreme Pontiff not grant the dispensation, lest scandal occur, reports the testimony of the Most Reverend Archbishop of Toulouse, who, transmitting the acts of the process to the Holy Congregation, wrote as follows: "I believe that the dispensation can be granted without serious inconvenience, indeed, it would be opportune, if one considers the husband's wicked behavior and indignity, which were the cause for the separation of the spouses, which was already pronounced in the civil Tribunal of Bayonne. Nor does this consideration seem to me to obstruct this grace:

[*Latin ed. p. 220*]

220 In Toulouse, concerning whether the woman, henceforth called the "Oratrix," has lived honorably and religiously, considering the weakness of human nature and the Oratrix's still young age. OBSERVATIONS OF THE DEFENDER OF THE VALID MARRIAGE. However, the defender of the validity of the marriage attempts to prove the consummation of the marriage from the very words of the woman herself. For Mary states that Charles never, during a year of cohabitation, attempted the consummation of the marriage. But this fact, which is inherently unbelievable, becomes even more unbelievable when Mary adds: it must be supposed that Charles, when entering into the marriage, was only concerned with the Oratrix's dowry, or was held back by impotence from the conjugal act. Now, a few words about each of the hypotheses devised by Mary. Concerning the first, the Oratrix states that, if Charles was attracted to Mary's wealth, it is more believable that he would have striven with all his might to satisfy his wife and make her a mother, rather than abstaining from the conjugal act. For he knew that, as long as the civil law of divorce remained in effect in France, anyone of the spouses could divorce and take all their possessions from the marital home. Furthermore, it is confessed, according to the defender of the sacrament, that Charles joined Mary in marriage with the most ardent love. To free herself from these bonds, the defender observes, Mary portrays Charles as a man, the most deceitful of all, and that for five or six months, while manifesting feelings of uncontrollable love, she always spoke falsehoods. But the contrary is proven. For a witness, not at all suspect, the mother of the Oratrix, testifies: "A woman who had known Charles as a child had proposed him to us and had given him to us as a model, and the information provided by the Jesuits, his former masters, was excellent." Now, concerning the second hypothesis, that Charles suffered from an impediment to consummation, the defender continues, it is sufficient to recall what Mary reported to the lay magistrate, and which things contradict each

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other. If true, the Oratrix, the defender observes, told the lay tribunal that...

[*Latin ed. p. 221*]

In TOLOSANA, after the marriage was consummated, the newlyweds embarked on a life of pleasure, and after an absence of several months, they returned to Toulouse. The wife fell ill, and the husband, leaving his ailing wife alone at home all day, would go elsewhere. It was then that the wife first learned that her husband was consumed by the love of another woman. However, if the truth were revealed to the Most Reverend Father and the ecclesiastical judge, Charles, on the very day of their marriage, seduced by adulterous embraces, abandoned Mary, and the following day, Mary revealed everything. Therefore, the defender argued, it is certain that Mary either sold a fabricated story to an ecclesiastical or lay judge. However, he believed that she is more likely to be telling the truth, as she recounts her story to the most sacred Prince and ecclesiastical judge. For, no one lies without expecting some gain. Indeed, it is advantageous for Mary to suppress the pleasurable excursions that were part of their marriage, and to assert that Charles, from the very first night of their marriage, turned away from her and revealed adulterous affections the following morning. Therefore, the orator pointed out, if Mary mentions such a public act as their monthly marital excursions in some solemn proceedings, sometimes mentioning them and sometimes suppressing them, we should not give credence to her account when she narrates events that were performed without witnesses or arbiters, and when she affirms that Charles, even though he showed all the signs of love up to the celebration of the marriage, immediately turned his love into hatred after the marital rite was completed, and that the couple lay together in the same bed for a year as if they were marble statues. Such events, the defender of the marriage noted, are readily recounted among miracles without reservation, as Coscius De Separatorum, lib. 3, cap. 2, no. 261 and following, states: "If both spouses claim that they were unable to have intercourse due to mutual hatred and antipathy, the task, the labor, will be to find someone who can immediately believe them and perform this miracle without any bitterness. Indeed, they did not perform (this) miracle, who, through force and fear, entered into a marriage that was repugnant, and who, despite their antipathy and hatred, their aversion, or their physical deformity, without consent, did not enter into a marriage that would be valid, and yet..."

[*Latin ed. p. 222*]

222. In TOLOSANA, due individuals, having met by chance, procreated children. Therefore, it is difficult to believe that two spouses, both powerful, who voluntarily entered into a conjugal state to satisfy their lust, in that age of vigor, amidst the darkness of night, which allows neither admiration of beauty nor contempt of ugliness, amidst the diverse touches of any part of

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the body of the opposite sex, amidst embraces which cannot be avoided in such an act, not once, nor even on a single night, but repeatedly, while in this actual state of union, could have been transformed into two stone statues... » "Therefore, in these circumstances," continues Cose, "it is not so easy to accept the confession of the spouses regarding the lack of consummation, nor is it easy to rely on the testimony of midwives regarding the virginity of the woman, but rather, it must be carefully investigated whether the spouses, in that act in which, as St. Augustine says, lust absorbs all reason, truly and actually did not consummate the marriage, or whether the midwives may have been deceived, or attempted to deceive with lies." Therefore, everyone can see, argues the defender, what Coscius would answer in the present controversy, in which the testimony of the midwives in no way holds weight, nor can it hold weight; from which it lacks any suspicion of forced marriage or antipathy; in this controversy, the witnesses who testify against the marriage have heard nothing, absolutely nothing, about the lack of consummation, either from the spouses or from others at a time when there was no suspicion. All are content to testify to the honesty and veracity of the woman. Furthermore, the tutor of the marriage laments that the doctors did not inform the midwives to examine other parts of the body besides the genitals. Indeed, Zacchias, having previously stated that corrupt young women sometimes constrict the female genitalia with certain astringent lotions and other suitable medicines, so as to make them so tight and narrow that they not only restore the natural cohesion that had previously been violated, but also exceed it, continues in book 3, title 2, question 7, number 3 and following, book 4, title 2, number 13: (there) "Because sometimes, for the sake of truth..."

[*Latin ed. p. 223*]

In TOLOSANA, a physician was consulted to give his opinion on whether a woman's virginity was intact or violated, so that he might not be deceived by feigned appearances through the use of medicines in his judgment. He should therefore pay attention to the following points. And first, he should not only consider those things which are derived from the structure of a woman's organs, but also other things which can be ascertained from the condition of the breasts, chest, abdomen, and indeed, the entire body. "After weighing these things," says the aforementioned author, "he will find that, when he considers the parts of a woman's body which naturally should be connected, they do indeed cohere, but he will note that they are endowed with a certain natural moisture, which is proper to those parts." Furthermore, the defender observes that an examination limited to a woman's organs is susceptible to deception, not only because of the danger of the aforementioned deceptions, but also because of other entirely natural causes, which are enumerated by the aforementioned Zacchias in book 4, title 2, question 1, paragraph

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28, and following. There, he demonstrates at length how a woman can be defiled, and even conceive, even when her hymen is intact. But the midwives of TOLOSANA, the speaker says, observed nothing, absolutely nothing, except the vulva of Mary. With these things having been stated, the purpose was to demonstrate whether the *S~w* should be consulted for a dispensation from a marriage that is valid but not consummated in this case. RESOLUTION. The Sacred Congregation, after deliberation on May 25, 1895, decided to respond: Affirmative.

[*Latin ed. p. 224*]

224. REGULATION CONCERNING THE ASSIGNMENT OF PARISHES TO THE CLERGY. May 25, 1895. Council of Trent, Session 27, chapter 5, concerning the reform of the clergy. The simple clergy of the city of Castrimaris, by decree of the same city, in the year 1766, obtained the church dedicated to Jesus and Mary, to govern and administer it, which had previously been abandoned by the Fathers of the Society of Jesus, and later by the Carmelites. Because this clergy, assigned to this church, had coalesced into a certain body, enjoying certain rights, privileges, and emoluments, certain rules were established for admission into this body, which had long been contained in tradition and custom, but were codified in the year 1801, with the approval of competent authority. Among other things, it is stipulated: "Therefore, the community of the simple priests of Castellamare shall be composed only of priests of the Diocese, excluding always any foreign priest." SUMMARY OF THE MATTER. Nevertheless, many, born elsewhere or lacking the necessary qualifications for co-option into this clergy, strove by lawful and unlawful means to be admitted into the clergy, in order to eliminate dissensions and difficulties. Therefore, the body of simple priests held a meeting on August 18, 1857, to declare the true meaning of the ancient statutes. The result was a unanimous decision, which the Bishop of Castrimaris, after expressing his approval, ratified and ordered to be put into effect, decreeing that, in the future, any new priests who wish to be incorporated into the community of the simple clergy must, without exception, possess the natural or original citizenship of this city, that is, citizenship derived from their own birth in this city, or from a father born outside this city who has acquired domicile in this city and has always been incardinated with the Bishop of this Diocese.

[*Latin ed. p. 225*]

CASTRIMARIS 225. Attached to this decree, a certain Antoninus of Naples, claiming to enjoy the citizenship of Castrimaris, because his family originated from that city, still resided there, and because he himself had been educated in the Seminary and ordained by the Bishop of Castrimaris, although by chance he was born elsewhere, and "the family was forced to migrate there for many years," and having begun his priesthood on

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January 11, 1892, requested to be enrolled in the clergy of the Church under the title of Jesus and Mary; but this intention was denied by the aforementioned clergy, because the priest Antoninus did not possess the citizenship of Castrimaris, as required by the statutes, since he was not born there, but in the archdiocese of Sorrento. The priest of Naples, against this interpretation of the statutes, appealed to the episcopal curia, formally intending to institute a legal action. The clergy, convened, opposed the declinatory exception of forum, alleging that they constituted a lay congregation of priests, approved only by the lay power of the King. This exception was rejected by the episcopal curia, on account of the personal privilege of the forum of the clergy, and declaring its own competence in the matter, it issued a judgment favorable to the priest of Naples on May 22, 1892: "The priest Antoninus of Naples possesses natural and original citizenship, is a simple priest and incardinated in the Church of Castrimaris, and is therefore entitled to be enrolled in the register of priests of the Church of Jesus and Mary." Against this judgment, the clergy of Castrimaris appealed to the Metropolitan Curia of Sorrento, insisting both on the declinatory exception of the ecclesiastical forum, and on the merits of the decision. The Curia of Sorrento decisively rejected the exception of incompetence, confirming, in this part, the judgment of the first instance, and invalidating the judgment of the Ordinary of Castrimaris, who had granted such a right to the priest of Naples. Relying on the aid of the appeal, the priest Antoninus of Naples appealed to the S. C. C. against this judgment, which is found in the Acts, Vol. XXVIII, page COCXXVIII. 15.

[*Latin ed. p. 226*]

226 In the process before the Curia of Sorrento, Castrimaris always refused to answer, thereby demonstrating his contumacy, for which a judgment was issued against him. He offered this excuse for his contumacy: that the metropolitan Curia had taken up the case on appeal, preoccupied with the opinion that the judgment of the previous instance should be invalidated and already publicly announcing this intention.

A SYNOPTIC DISCUSSION: DEFENSE OF THE COMMUNITY OF PRESBYTERS. The community of simple priests of Castrimaris, through its advocate, presents its allegations, and first notes that the opposing party could have been prevented from further appeal, because he made himself contumacious with frivolous reasons, and, having been summoned before the judges and arbitrators to present his reasons and proofs of his refusal, he stubbornly refused to appear. Then, the advocate, more confident in the intrinsic merits of the case, states that the opposing party cannot be admitted to the aforementioned clergy, because he lacks the original nativity, and also the title of a permanent domicile of his father, who moved elsewhere and abandoned the city of Castrimaris. For article 7 of the statutes clearly determines the qualifications for membership. "The

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community of simple priests of the clergy of Castellammare will be composed solely of priests of the diocese." Furthermore, with the decisive declaration of the Bishop, and according to law, it was decreed that, in the future, any new presbyters who wish to join the community of simple clergy must absolutely possess natural or original citizenship in this city, that is, citizenship derived from their own birth in said city from a father who has already acquired citizenship in the same city. According to the advocate, this decree, in accordance with the law of the statutes, clearly excludes any other interpretation, and completely excludes any exception, whether in a prescriptive, presumptive, or interpretative sense. In the statute, two conditions are required in a conjunctive manner: nativity in the city and the father's domicile, and if either of these is lacking, the person is not legally entitled to be admitted to the community of priests.

[*Latin ed. p. 227*]

227 Since all the qualities required by the statute must be verified, and it is not sufficient to prove one without the others, *Rota rec. decis. 78, p. 3 rec. etc.* The speaker continues: Every society, every community, indeed almost all states and regions are governed by particular statutes, which must be inviolably observed, since in this case we are not dealing with illicit things, nor with those which undermine the discipline of the Church. Concerning this matter, Cardinal De Luca, in *De iudiciis, disp. 36, n. 42 et seqq.*, decisively affirms the precedence of particular statutes in judging, whether in the secular forum or in the ecclesiastical forum. In the first case, he teaches that, in the secular forum, the statute of a particular university must be considered first, and if particular rights are lacking, recourse must be had to civil common law. In the second case, namely in the ecclesiastical forum, he writes as follows: "In the other kind of ecclesiastical or canon law, the same comparative order is maintained, that is, first, the more particular law is considered, which consists of the laws or statutes of a particular chapter, or college, or other ecclesiastical university, concerning itself and its members. Then, the synodal constitutions, of the diocese, and in the absence of these, successively and gradually, the synodal constitutions of the province are considered. And finally, the general canon law or pontifical law, which is contained in the books of decrees or in the Apostolic Constitutions, which are established for the entire Church." But, the advocate insists, these kinds of laws eliminate abuses by those seeking to participate, which would otherwise be reduced to a minimum, causing prejudice to others, and with negligence of divine worship. Elsewhere, the Supreme Pontiffs have approved these customs in the kingdom of both Sicilies. Among others, Paul III, in *A.p. Brevi*, severely restricted the number of participants in the church of Tarentum, because of the numerous clerics who were importunately seeking to be admitted, so that each citizen of that city, and each of their children, would have to seek their necessary

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sustenance elsewhere.

[*Latin ed. p. 228*]

228 Individuals from Castrimaris were being compelled. This was demanded because, from that time forward, they were to be admitted into the choir, and they were to be of suitable character and of the chosen class of citizens of the city of Taranto, according to ancient custom, and the same privileges were to be granted to them as to the chapter and the clergy. The Supreme Pontiff benignly approved of this petition, listing the requirements, provided that they serve in the aforementioned church, according to ancient custom, and that they are of the chosen class of ancient citizens of Taranto, born of both parents who are citizens. And the Sacred Congregation of Councils, on April 24, 1860, responded to the proposed question: "Whether, given Pope Paul III's disposition regarding the class of individuals to be admitted to participation, the sons of foreigners who have resided in the city of Taranto for more than ten years, under the force of the aforementioned pragmatic sanction of that kingdom, as citizens, can be admitted?" with the response: "These aforementioned citizens cannot be admitted in the future." Then, the advocate presents several resolutions of the Sacred Congregations in support of his case. Thus, the Sacred Congregation of Councils, in Spoletana, on March 30, 1861, rejected the request of certain young women, born elsewhere, who claimed to be entitled to a dowry subsidy because of their acquired residence; since the statutes designated the quality of the young women, namely "that they are native to Usigni, or daughters of fathers and mothers who have resided in Usigni, and who still reside there." But the Sacred Congregation gave the response to the question: "Whether they should be admitted to the dowry subsidy," with a negative answer. The Sacred Congregation of Extraordinary Affairs and Regular Canons, in Fanen, on August 25, 1893, "regarding the granting of two free places for the education of young people from that land," argued that, on the one hand, Barbadoro of Monda was a native of that land, while, on the other hand, a certain Stortonius claimed to be admitted, although he was born elsewhere, namely in the diocese of S. Andrea of Pergola. The Sacred Congregation resolved that the free place should be given to the young man Barbadoro of Monda (1). And in this vein, the advocate continues, stating that civil law experts have rendered judgments on such conditions, especially concerning natural birth. Among other decisions, the advocate presents the following (1) You have this question in Volume XXVI, 563.

[*Latin ed. p. 229*]

CASTELMARIS, 229. On April 26, 1676, before the Consistory at Emerich, a certain Mauritius (or, as in the case of Antoninus) was rejected by the Consistory, because, according to the carefully considered words of

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the Constitution, he was not seen to possess the qualities required, which primarily consisted of true and real residence and origin, as noted by the Abbot in chapter [reference omitted]. In all matters concerning rejection, see Garzia, *De Beneficiis*, question 7, chapter 15; *Rota Coram*, December 8, number 3, etc.: "Indeed, the aforementioned Constitution, in chapter 12, stipulates (that he who is born in the land, or town of Herberia, and whose parents have resided there for at least ten years prior, and who was raised there, and no other, nor in any other way, shall be received, and that any election made otherwise, without the aforementioned requirements, is null by law) distinguishes two cases, and in each requires different things: in the first, namely, for one born in the town, it requires the parents' ten-year residence; in the second, namely, for one born in the territory, it requires the origin of those same parents from the town itself. This ten-year residence of the father and mother in the town of Herberia before the birth of the individual is not proven by the witnesses, brought forth by the same Mauritius, because, apart from the exceptions they experience, they are contradicted by others, examined by the Consistory regarding the lack of residence, who, when they correctly restrict and support this point, are all the more to be preferred; chapter [reference omitted]. It does not matter that Marius possessed a house in the aforementioned land of Herberia, and there possessed property, and paid for it, and therefore it may seem that he did not lose his domicile, and at least retained residence in his mind, because neither domicile, nor a feigned residence, such as that held in the mind, satisfies the meaning of the aforementioned Constitution, which requires a true and natural residence, as indicated by those words: 'he who has lived there and was raised there,' which can only be achieved through physical presence, or residence in that land, and in this way, domicile is distinguished from residence, as noted by Barbosa, *De Officiis et Potestatibus Episcoporum*, presumption 42, number 2, and *Decreta Concilii*, 37, section 9, ibid. And it is said that one dwells when he resides there, eats, and drinks."

[*Latin ed. p. 230*]

250 CASTRIMARIS: "Fewer qualities required by the constitution in the second case apply to Mauritius; for he was not born in the territory, but in a town, and Marius, his father, does not originate from the town, but from the villa of the Saints Faustinus and Jovita, located two miles distant from it, and Helen, his mother, is from the city of Parma." Following these considerations, the advocate points out that, after almost forty years from the confirmation and declaration by the court of Castrimaris, it is not clear by what right the opponent presumes, contrary to the statute, to be included in the particular association. Then, the advocate observes that the judgment of the court of Castrimaris erroneously refers to the Constitution of Innocent XII, confusing the domicile of birth with the acquired domi-

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cile necessary for receiving the sacred orders. For it is understood by all that if someone from outside, for example, a man from Parma, Venice, or Naples, establishes a domicile or obtains a residential position in Rome, he can canonically be ordained to the sacred orders. Furthermore, it is also learned from the fundamental principles of jurisprudence that a Bishop can confer the sacred orders upon a member of his family, provided that he has remained with him for a complete and uninterrupted period of three years, and has been supported at his own expense. Therefore, he concludes that what has been explained above does not affect or harm the reputation of the Reverend Anthony of Naples, but rather defends the most provident law of the statutes, so that the number of participants is not increased to the detriment of a third party; and so that the saying is not forgotten: "Resist the beginnings; medicine is prepared late."

DEFENSE OF THE PRIEST OF NAPLES. In favor of this Priest, who has not presented any special allegations for this stage of the appeal, some excerpts have been taken from the records and evidence presented in the first and second instances. From these, regarding the facts of the origin and domicile of the family of the Priest of Naples, it is established that Vincent Di Naples, the grandfather of the Priest Anthony, was baptized on July 15, 1792, in the parish of Domus Castrimaris, born of the parents Anthony and Helen of Naples, who were already citizens of Castrimaris. From Vincent were born...

[*Latin ed. p. 231*]

CASTELMARRE 231. Aloysius, born in the city of Naples, where his father had traveled for business, maintained his residence in the city of Castelmarre. From Aloysius was born Antoninus, who, having completed his eleventh year, entered the seminary of Castelmarre; where he was advanced to the sacred orders, up to and including the priesthood, and in the documents of his sacred ordination, it was added: "of this city of Castelmarre and Stabiae." Concerning this matter, Schmalzgrueber, Part III, letter IX, number 37, states: "A person is considered to be from that diocese or place in which he was born, provided that his father had his residence there. It does not matter if he himself was born elsewhere, because, for example, if his parents, while he was being born, were residing outside their domicile for the purpose of office, legation, or business, he is still considered to have been born in the place of his domicile, as can be gathered from L. filios 3, C. de mun. et orig., and L. cives in fine C. de incolis: 'The domicile of origin is also considered the domicile of the son.' And elsewhere, extensively. It should also be noted that the Council of Trent, Session XXIII, on Reform, Chapter VIII, prescribed: 'Each one must be ordained by his own bishop.' And Innocent XII, in his Bull Speculatores, established that for the purpose of ordination, either the bishop of origin or the bishop of domicile could proceed, provided that, either by residing in that place for at least ten years,

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or by transferring a significant portion of his property and assets there, and furthermore by remaining there for a considerable time, he had clearly and sufficiently demonstrated his intention of permanently residing there; and nevertheless, in both cases, he must further affirm by oath that he truly and genuinely intended such a thing. If, however, he was born in that place by accident, by reason of a journey, office, legation, commerce, or any other temporary stay or permanence of his father in that place, then the true and natural origin of the father must be considered, and accordingly, the son follows the origin of his father. The Sacred Congregation of the Council followed this doctrine in resolving the controversies between the Archbishop of Naples and the Bishop of Vico Equense concerning the ordination of the cleric Benedict Mannella, on March 12, 1718.

[*Latin ed. p. 232*]

252 AT CASTRIMARIS, between the Bishop of Tusculanum and the Most Eminent Vicar of the City, concerning the ordination of the cleric Francis Antonucci on the 27th of April, 1820. From the documents presented and from the testimony of witnesses, with no opposition raised against them, nor any exception taken to their testimonies, it is clearly evident that the family of Naples, originating from the priest Antoninus of Naples, resided in the city of Castrimaris, in the region of Stabiae, where they possessed property and conducted business, where they contracted marriage and met their end, so that they truly possessed original citizenship there. This original citizenship does not impede the birth of Aloysius of Naples, the father of the priest Antoninus; who was born in Naples, as can be gathered from the very fact of his birth, having afterwards, due to a temporary journey, returned to Castrimaris, where he was a craftsman in the Arsenal and subsequently engaged in business until his death; although, due to the infirmity of his wife, he petitioned for several years to be in the Diocese of Surrentum, he never intended to remain there permanently, which is absolutely necessary for acquiring a domicile, *L. l. cit.* Although the priest Antoninus of Naples was conceived in Castrimaris, and born in the parish of Saint Agnes in the Diocese of Surrentum, because his mother, by the prescription of a physician, went to Surrentum for health reasons, and although she gave birth to two other daughters in that diocese, the very fact of her migration and return to her homeland of Castrimaris sufficiently demonstrates that she never established a domicile there, especially since Aloysius of Naples, the head of the family, never abandoned the businesses and domicile of Castrimaris. Moreover, the fact that he was sometimes in the peninsula of Surrentum, and at other times in another place, is clear proof that he had no intention of living there permanently. The priest Antoninus of Naples, being eleven years of age, was enrolled in the clergy of Castrimaris, and was received into the Seminary, and, with due observance of the order of laws, was promoted through the minor and major Orders,

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up to the priesthood, by the Bishop of Castrimaris, as if he were his own, and at the opportune time, he offered prayers to the Prefect of the Clergy.

[*Latin ed. p. 233*]

CASTELMARIS 233. Concerning the church of Jesus and Mary, regarding the inclusion of his name in the list of priests of that church, where the aforementioned requests had been rejected. With these and other matters brought forward on both sides, the aim was to determine whether the judgment of the Metropolitan Curia of November 20, 1893, should be confirmed or overturned in this case. RESOLUTION. After deliberation by the Sacred Congregation of the Council on May 25, 1895, it was decided to respond: "The judgment is to be overturned." From which the following may be gathered: I. It is to be considered that someone is a native of that diocese or place in which, at the time of his birth, his father had his established domicile. II. This rule does not prevent someone from being born elsewhere, provided that his parents sought another place for the purpose of office, legation, or business, with the domicile remaining firm; for by a legal fiction, he is considered to be born in the place of the domicile. III. The son follows the origin of his father, whenever he is born by accident in a place where the father had a temporary stay. IV. It is evident in the case of the aforementioned priest, Antoninus, that his predecessors never abandoned their proper domicile in the city of Castelmari, with the intention of remaining elsewhere permanently.

NOVAR A. FUNERALS. On May 27, 1895, and on June 22, 1895. On the 21st of the month, letters arrived at the Prefect of the Sacred Congregation of the Council from the parish priest of the church of the Most Holy Trinity in the city of Novara, recommended by the Ordinary, which are as follows: "In Novara, in the Piedmont region, there are several parishes, each having a common cemetery outside the walls. — Not a summary of the facts."

[*Latin ed. p. 234*]

254. It rarely happens that the bodies of some who have died outside the city are transported by railway, so that they may be buried in the city cemetery, while those who have either until death maintained a residence in the city, or who once had a residence but have long since lost it, or who have never had a residence or quasi-residence, but who have only parents or relatives residing in the city, are buried there. Furthermore, it has been the custom among us in these cases that a priest is called, who, with a cross erected, solemnly accompanies the bodies from the place commonly called the "Station" of the railway, to the common cemetery, usually following a direct route outside the city, sometimes passing through city streets, but more rarely with funeral rites performed in some church. "Having explained these things, since here we are not dealing with a simple transfer of a body from one place to another, but with a true funeral function to

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be performed again over the bodies, about which there is nothing special mentioned in the Diocesan Synod, nor anything similar among more recent authors, nor any custom hitherto established, when other things are done differently, the most reverend Congregation is humbly asked: 'Can the parish priest of any urban parish, indiscriminately for all the cases mentioned above, be called by the parents or relatives of the deceased at will, or rather, is the parish priest of that parish always, or at least in some case, among those mentioned above, legally obliged to be called, within whose boundaries the railway station is located?'

Synopsis of the Discussion. It has been established by law that the proper parish priest for funerals is the one within whose district the person, while dying, has a domicile or quasi-domicile. C. 3, De sepult, in VI Canic. Formerly, De sepult, and Rit. Rom. De exeq. And therefore, it belongs to the parish priest of the domicile or quasi-domicile, not only to carry the body and to...

[*Latin ed. p. 235*]

NOVARIEN. 235. The funeral expenses are to be borne; but, moreover, if the deceased is to be buried in the parish church, funeral prayers must be recited over him, and finally, he must be consigned to the earth. *Vecchiotti, Inst. Can., vol. 2, lib. 3, cap. 5.* If, however, the deceased is to be buried not in the parish church, but in another burial place in Alet, then, according to ordinary and common law, the parish priest is only obliged to take the body and bring it to the church, as it is now called, which serves as the repository, and then the rest pertains to that church; the parish priest, however, is exempt from the fourth part of the funeral expenses. If the burial is to take place in a distant region, this does not change the laws. The only difference is that, so that the deceased may not be deprived of sufficient prayers, the parish priest of his domicile, at least ordinarily, pays the proper funeral expenses for the body; and therefore, he first brings it to the parish church, and then, after everything has been completed, he associates the person who will bury the body. These regulations are prescribed by the clergy of Rome and are in accordance with the principles of law. *Rota decis. 76 cor. Decursii § 6, D'Annibale Sum. tom. 3 § 481.* Furthermore, whenever the deceased or his family decide that, after the necessary rites have been performed, the body should be buried in a distant region, it is certain that, as soon as the body to be buried arrives at the church where it is to be buried, the rights of that church are revived, and the parish priest of the deceased must hand over the body to the rector of the church, to whom it is then reserved to bury the body, after the preliminary blessings. *Benedict XIV, n. 105.* These things are clear; however, the point where the greatest difficulty arises is that, in this case, the burial places of the deceased are not in any particular church, nor in a cemetery belonging to a particular church, but in a municipal cemetery to which several churches have a right.

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Therefore, questions may arise. In order to avoid confusion in our case, it is necessary to distinguish between those who, until their death, maintained their domicile in the city, and those who never had a domicile, or a quasi-domicile, or who have lost it for a long time.

[*Latin ed. p. 236*]

236. NOVARIEN. In the first case, when a certain and proven rule exists, that municipal cemeteries have been substituted for the cemeteries of individual churches, so that each church exercises the rights that it formerly held within itself, now in the respective cemeteries, and consistently with the law, by which the burial of the bodies of the deceased within the city walls was prohibited, no church has had the right to bury, but only the place has been changed, cf. Vecchiotti, loc. cit., p. 61, in note; Emum D'Annibale, I, c., note 84; and S. C. C. in Ariminen, Funerum, June 16, 1827, and Forolivien, January 26, 1833, etc. Thus, whenever the bodies of the deceased arrive at the railway station of Novarien, it would seem to be reserved only to the proper pastors to receive them and to take them to the burial ground. Nor can the pastor in whose district the railway station is located claim the right of funeral and burial, because the body arrives at and passes through his parish. For it is established and approved in Gardellini, vol. 7, in supplement, no. 35; Benedict XIV, note 105; Innocent XI, decree of 1676, apud Ferraris, v. Parochus, § 3, no. 40, that the pastor of the deceased can enter a foreign parish with a stole and cross, either to take the body out of it, or to accompany it to the burial church, or to take the corpse to the cemetery; but that the pastor of the place through which the funeral procession passes cannot obstruct it, or question it, or claim jurisdiction for himself. However, it must be observed that the funeral procession must pass through a foreign parish without solemn pomp and without undue delay. Cf. Vecchiotti, I, c., § 62, in note, and Emum D'Annib., vol. 3, § 481, no. 79, according to the resolution of the S. C. C. of January 25, 1846, and February 24, 1872; but sometimes the funeral procession is carried out with pomp and through the city streets. Furthermore, in these cases, the rights of the pastor of the place of the railway station must be respected; and therefore, the proper pastors of the deceased would not seem to be able to access the railway station, to receive the deceased, and to carry out the funeral solemnly; for they would plainly invade the rights and jurisdiction of another parish.

[*Latin ed. p. 237*]

NOVARA. 237, contrary to what the canons prescribe. Barbosa, *De Officiis Parochorum*, part 1, chap. 12; Benedict XIV, *Notitia*, 105. In the other case, that is, when someone, being a stranger from any parish within Novara, requests burial at the station, and nothing has been established in the Diocesan Synod, nor any custom prevails, the chapter of the cathedral

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church could, in privative right, prevent other pastors from burying the deceased, to whom no jurisdiction pertains, neither by reason of origin, nor by reason of domicile, nor by any other title; since the cathedral church is considered, in law, as a universal parish of the entire city and district, and so it is in fact concerning the funerals of pilgrims and strangers. Barbosa, *De Parochiis*, part 3, chap. 26, no. 35; Passerin, *De hom. stat, et off.*, vol. 2, question 87, no. 314, and S. C. C. in *Caven. Funerum*, February 7, 1733. On the contrary, if, perhaps with some foundation, the right were granted even to the pastor of the parish, within whose boundaries the station is located: since others cannot produce any title of jurisdiction to claim the burial for themselves, no one among them could exercise an act of jurisdiction in foreign territory, and much less conduct the funeral rites. This, moreover, seems to be deduced from analogy; for if even the body of a stranger is to be removed from the churches of regular, non-parochial institutions, the association pertains to the pastor of the parish, within whose boundaries the church or convent is located. With these things noted, the Sacred Congregation responded on May 27, 1893: "Regarding the deceased who had their domicile in the city, the pastor of the respective parish is to be called; regarding others, the chapter of the cathedral church and the pastors of that city are to be consulted." The Ordinary, giving instructions, reported that the opinion of the chapter and of nine of the ten pastors of that city was that the funeral functions for the burial in the urban cemetery of persons who died outside the city, but who did not have a domicile there, should pertain to the pastor to whom the parents or relatives belong, within whose parish the parents or relatives reside.

[*Latin ed. p. 238*]

238. NOVARIEN. Certain individuals from the parishes, having agreed with the Chapter in their resolutions, and after some deliberation on the matter, believe that it is permissible for parents, relatives, affine relations, or even friends, to call any parish priest they wish, even one not of their own parish, to associate the body of a deceased relative or friend with the Chapter; especially considering that, for the deceased, the right to choose the burial place is exercised, and in exercising this right, they are tacitly or expressly presumed to be delegated. The parish priest who disagrees with the common resolution believes that the request should be answered in this way: "The parish priest of that parish within whose boundaries the railway station is located, must be called, and always." It is permissible to consider only this new form of the question, so that it may be determined whether the association of the bodies of the deceased, who are foreigners, pertains to the Chapter, or rather to some of the parish priests. Indeed, the Chapter of the Cathedral Church has a founded intention to bury those whom the other parish priests do not include within their special jurisdiction. On the contrary, a parish priest invited by relatives claims the association of

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the body by the right of the chosen burial place. In truth, common law recognizes the right of the faithful to choose their own burial place; and the exercise of this right may be expressly delegated to others, can. 13 de Test. Indeed, the father chooses the burial place for his minor children, as if by a presumed mandate: from cap. 7 de sepult., and 4 h. t. in 6. Moreover, it does not seem entirely foreign to the law that a presumed mandate for choosing a burial place may be admitted among close relatives and affine relations; whether it may also be admitted among friends must be decided by learned judges. Meanwhile, it is worth noting that the parish priests testify in their resolutions about a custom that is almost common and peaceful in their region, so that such associations are made by parish priests invited by the family of the deceased. However, the case of an invitation made by the friends of the deceased should be quite unusual and very rare. With these observations, the question was raised as to what should be answered in prayer.

[*Latin ed. p. 239*]

NOVARIEN. 239 RESOLUTION. The Sacred Congregation of the Council, after deliberation on June 2, 1895, decided to respond as follows: "Concerning the matter of burial, if it is not known where the deceased was legitimately buried, nor if the body must be brought to the parish of his domicile, the right to perform the funeral rites belongs to the cathedral church, subject to particular agreements in individual cases. FROM WHICH THE FOLLOWING ARE DERIVED: I. It is certain in law that parish priests have a well-founded intention of performing the proper funeral rites for their own parishioners, and for all those within the boundaries of the parish, without being perfunctory. II. Due to its primatial and preeminent authority over other churches, it has been recognized, almost as an exception, that the cathedral church has the right to bury those who, while merely passing through the city, die from some sudden infirmity. III. It is fitting that such travelers, who belong to no parish, should be subject to the cathedral church, so that they do not lack a minister for the sacraments and funeral rites in articulo mortis." ORITANA BROTHERHOODS. July 1, 1895. Council of Trent, Session 25, Chapter 14, On Reform. SUMMARY OF THE CASE. In the town of Francavilla-Fontana, in the Diocese of Oritana, there have long been rivalries between the confraternity dedicated to the Immaculate Conception and another called after Saint Bernardino. Indeed, in 1859, the former petitioned and obtained the right to celebrate the feast of the holy martyrs Cosmas and Damian in its own chapel, which until then had only been celebrated by the other confraternity. — Moreover, it is claimed that this confraternity began to celebrate the feast of the holy martyrs with greater pomp, so much so that, for the first time on the feast day, it publicly

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carried the sacred images through the town.

[*Latin ed. p. 240*]

240 ORITANA: The authorizations, suitably obtained in writing from the Ordinary, are presented in the records. On the other hand, the confraternity, called "Immaculate Conception" by the Most Blessed Virgin, insists strongly, asserting that it had previously led such solemn processions before the cult of the Saints was established in the oratory of the other confraternity; and it proves this by producing copies of authorizations, granted by the Curia, for leading public processions, dating back to the year 1852, and it presents several witnesses who attest to this before the notary. But the confraternity of Aversa, in turn, presents witnesses before the notary, who testify to the contrary. These rivalries, however, escalated into open controversy in the year, it seems, 1869, after the members of the confraternity also called "Immaculate Conception" by the Most Blessed Virgin, having obtained a legitimate authorization from the Ordinary, began, on the same day, to lead a public procession in honor of the Saints. The confratres of the other confraternity protested that they could not allow this, arguing that the exclusive right to lead public processions belonged to them, given their longer established history; and therefore, they appealed to the Sacred Congregation of Extraordinary Religious Affairs, asking it to confirm this. However, the Congregation responded prudently on July 25, 1890: "The oratory may exercise its right before the diocesan curia, as and to the extent that it is legally entitled to do so." The same confraternity, having introduced a petition to the Oritana Curia, declared that both confraternities were lacking the right to hold a procession on the feast of the Saints Cosmas and Damian; because this right depends entirely and exclusively on the will of the diocesan Bishop, with whom, by law, is the governance and administration of the same diocese. However, the confratres called "of Saint Bernardino" did not agree with this, and they interposed an appeal to the metropolitan curia of Taranto. When the appellants did not properly observe the deadline or fatal time for appealing, a prejudicial question arose as to whether the appeal should be admitted. The Taranto curia considered that the time for the appeal had not been materially observed; and therefore, it admitted the right of the...

[*Latin ed. p. 241*]

ORITANA, 241, concerning the location of the Sodality of Saint Bernard, regarding the holding of an external procession on the feast of the holy martyrs Cosmas and Damian, with the permission of ecclesiastical authority, in which matter the Sodality of the Immaculate Conception should always take precedence. The Sodality, named after the Blessed Virgin Mary, conceived without sin, appealed to the Holy Congregation of the Council from the decision of the metropolitan curia. A summary of the arguments

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concerning the rights of the Sodality of Saint Bernard. Although it might seem that the time for appeal had passed, it is stated in the metropolitan decision that the appeal was made in good faith, without, indeed, considering whether the deadline had passed. In this case, Cardinal De Luca, in *De iudiciis*, book 16, sections 37 and 38, and in *De Angelis*, from the lectures on canon law, book 2, title 38, on fatal errors, supports the admission of the appeal. For then, although ten days may have materially passed, they are considered, morally, to still be in effect. As for the merits, there is no question that the Sodality of Saint Bernard could hold an external procession on the day of the holy martyrs, provided that it is done under the direction of ecclesiastical authority, in order to eliminate any abuses that may arise. Hence, the Constitution of Clement VIII, dated December 7, 1604, and countless resolutions of the Holy Congregations in Rome, grant and recognize the authority of ecclesiastical power to regulate sodalities; and Ferraris, in the article "Processiones," states: "to announce, direct, order, and prohibit processions, which belong to the power of the Bishop." Therefore, ecclesiastical authority, with regard to sodalities, does nothing other than their regulation. Because sodalities, by their own right and nature, perform sacred functions, they do not, however, enjoy the free exercise thereof, which can be regulated by ecclesiastical authority, as the case may require. Regarding the feast day, it is noted that, according to Ferraris, in the article "Festivitates," number 46, "two neighboring churches should not celebrate the same feast on the same day, but the modern church should choose another day," which is confirmed by the Acts of the Holy Congregation of Bishops, Volume XXVIII, page OOOXXVIII, 16.

[*Latin ed. p. 242*]

On March 19, 1581, in Massanen and in Sabina, and on November 20, 1684: "The feast should not be celebrated on the same day in two neighboring churches, but the newer one should choose another day." Regarding processions to be held on the same day, the Sacred Congregation of Rites decreed on January 24, 1643, in Cremona: "That two processions should not be held in the same place, but those who are to hold the procession should maintain their quasi-possession; the newer one, however, must choose another day that is not impeded." This is confirmed by the Sacred Congregation of Councils on February 23, 1893. When the paria of two sodalities are required, it seems advisable to refer the matter to the Chancery, where the one that was established earlier in time will have priority in law; in this case, the sodality of St. Bernard should be preferred to the other, since its existence precedes the other.

RIGHTS OF THE SODALITY UNDER THE BLESSED VIRGIN. But the Confraternity dedicated to the Blessed Virgin, conceived without sin, points out the following in its statutes: Firstly, they contend that the appellation is peremptory. For it is clear that a statute regarding

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appellations is established; for it aims primarily to prevent disputes from being prolonged indefinitely. However, older laws granted a very short time for appealing, and if that time passed without appeal, the dispute was considered ended, and the judgment acquired the force of res judicata. However, with the passage of time, new laws have sought to moderate the strictness of the time limit. And Justinian, in the new code, book 23, chapter 1, established: "We decree that appeals, whether made in person, or by procurators, or by defenders or curators, or by guardians, may be presented within a space of ten days, counted from the recitation of the judgment, to the judges by those who are interested." Following civil equity, the Church, in chapter 2 of "De Sententia et Erradicata," states: "It is both equitable and proper to bring disputes between litigants to a swift conclusion." Furthermore, in chapter 15, it states: "When, after a space of ten days, the judgment becomes res judicata, he who does not seek the aid of appeal within that time, forfeits his right to appeal."

[*Latin ed. p. 243*]

ORITANA 243 denied admission, stating that, according to the interpretation of the law, the appeal had not been filed within the prescribed time. Therefore, since it is established from the records that the Sodalitas Divi Bernardini of Senensis filed an appeal with the metropolitan court on October 31st, after the judgment of the Orirana court, which had been notified to them on October 3rd, namely after 27 days, this appeal is invalid and cannot be upheld, the advocate observes. Indeed, the metropolitan court itself acknowledged this in its judgment, noting that the appeal had been filed after the deadline. Therefore, the advocate argues that the metropolitan court, despite admitting the appeal, has misinterpreted the teachings of the canonists. For, he says, if De Luca, or De Angelis, or Scaccia, had read carefully and impartially about appeals, they would have easily noticed the reasons that impede the progress of an appeal; ignorance of the law is not a valid excuse. The most learned De Luca speaks of ignorance in *disc. 38 de iudiciis*, but he speaks of ignorance of the facts, namely, when a judgment is unknown to the person to whom the right to appeal belongs. And indeed, in the aforementioned passage, n. 34, he says, "or, it may be a singular and private impediment, the justification of which depends on the particular circumstances of the case, such as infirmity or poverty, or imprisonment, or enmity, or death, or the absence of a procurator, or even calumny or malice, or just ignorance, as happened in the case of an heir [due to ignorance of the facts]. And in such a case, time does indeed run, but it must be remedied with the aforementioned remedy of restitution to the original state, regarding which a just cause is often disputed, and sometimes granted, and sometimes denied, according to the quality of the case." All canonists generally agree with this. Then, addressing the merits of the case, the advocate argued that the Orirana episcopal court had rendered a

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judgment, and therefore its judgment should be upheld. Indeed, the Holy Council of Trent precisely defined the issue of precedence in processions with the following words in chapter 13 *De regularibus*, session 25: "All controversies regarding precedence, which...".

[*Latin ed. p. 244*]

244. Often, great scandal arises among ecclesiastical persons, both secular and regular, when, in public processions, or those held for the burial of the deceased, or in carrying umbrellas and other similar things, the Bishop, having cast aside all distinction, and notwithstanding any objections, arranges [the order]. The most prudent disposition of the Holy Council, the Orator observes, teaches us how all questions concerning right and precedence in processions are to be determined; namely, by the authority of the Bishop, who can permit or prohibit them. This, in learned discourse, is explained by the Reverend Father Herdt – *Sacrae liturgiae praxis*, part VI, on processions, number 314. "Can processions be held by one's own authority? Answer: 1° Except for those which must be held publicly according to the rite and order prescribed in the Missal and Ritual. 2° Other customary processions, even public ones, can be held without new permission from the Bishop, provided, however, that the Bishop can prohibit them, even against custom (*S. Congreg. Rituum*, 14 January 1617, n. 381, 518; 2 August 1631, n. 788, 933; 14 May 1671, n. 2433, 2883; and *Quarti de process*, decree 3, page 1, chapter 4, n. 151). 3° Neither extraordinary general processions, nor new particular ones, not prescribed in the Missal and Ritual, can be instituted without the permission of the Bishop, because the care of spiritual matters and the governance of churches primarily belong to the Bishop; and furthermore, for general processions, a universal power and jurisdiction over all ecclesiastical persons who are to be convened for public processions is required, which resides solely in the Bishop (*S. C. Rituum*, 14 January 1617, n. 581, 582; 14 May 1672; 22 November 1681. *Quarti*, loc. cit.; Synod of Belgium, volume 2, page 363)." And Barufiald, *Ad Rituale Romanum*, commentary, on processions, section 1, number 19. "Furthermore, whatever these processions may be, the right to determine them, and even, for a reason, to prohibit them, belongs to the Bishop (*Barbosa ad Conc. sess. 25*, n. 13. *De Pot. ep. Alleg.* 78, numbers 3, 4, on canonical rights and dignities, chapter 42, n. 20)."

[*Latin ed. p. 245*]

ORATION. 245. When the metropolitan court replies: that ecclesiastical authority granting permission to perform religious functions within Confraternities does not constitute a transfer of legal right, which they already possess by their very nature, and which passes from the first to the second, but is rather a simple act of consent, by which the exercise of that right itself is regulated. Ecclesiastical authority has the right to permit and regulate

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ecclesiastical functions; but from the fact that it has the right to regulate them, it does not follow that this right is transferred to the confraternity, when permission is granted to it... the advocate observes that this method of argument is based on a fallacy. Indeed, if the metropolitan court, when deciding that in the case of confraternities contending, none possess a legal right, to hold a procession of the holy martyrs, did not deny that sometimes this right may generally belong to confraternities, but rather established that the exercise of this right is entirely subject to the authority of the bishop: for the bishop, in controversies concerning precedence, "with the removal of appellations, and notwithstanding any objections, decides." Furthermore, the advocate notes, quite rightly, that the metropolitan court unjustly recognized the right of precedence for the confraternity of Saint Bernard in the procession, when in fact no documents are available to support this claim, nor are the permissions obtained since 1859 sufficient for this purpose, namely, the right to lead public processions. On the contrary, the cult of these holy martyrs certainly existed earlier with another confraternity, as the members of Saint Bernard's confraternity themselves do not dare to deny. Moreover, the advocate continues, there is also present for the confraternity of the Blessed Virgin Mary, conceived without sin, the requirement of priority of time, even in the matter of holding the procession. For in the archives of the confraternity of the Blessed Virgin Mary, conceived without sin, documents have been found, and are present in the records, from which it is clearly evident that the confraternity of the Blessed Virgin Mary, conceived without sin, obtained permission to hold a public procession as early as 1852. This, the advocate confirms through the testimonies of witnesses, given before the Notary of the Crown.

[*Latin ed. p. 246*]

246. HAVING stated these things, it was necessary to resolve the doubt concerning whether the judgment of the metropolitan curia should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation, after deliberation on July 2, 1895, decided to respond: "There is no appeal." FROM WHICH, THE FOLLOWING MAY BE GATHERED: I. The judgment of the Oritana curia remains in full force and effect, since no appeal was declared from it to the metropolitan curia, and the time for appealing has expired. II. From Session 25, chapter 13, concerning regular canons, of the Council of Trent, it is understood that the Bishop, having all appeals removed, has the right to settle disputes between ecclesiastical persons, both secular and regular, from which scandals often arise. III. Therefore, it seems fitting that Bishops should define questions of law and precedence in processions among the sodalities of their own diocese, before disputes and scandals arise. IV. It is the prerogative of the Bishops to authorize any processions, and also, for just cause, to prohibit them; except for those which must be held publicly according to the rite and order prescribed in

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the missal and ritual. V. When two processions are scheduled to take place on the same day and in the same place by two sodalities, it is the duty of the Bishops, in order to resolve questions of precedence, to favor the sodality that can clearly demonstrate its prior claim in time. VI. To the extent that the true time of the founding of one or the other of the sodalities is obscured, the Ordinary, supported by his own authority, should prefer, as a judge, whichever he deems to be more fitting in the Lord.

[*Latin ed. p. 247*]

247 VELITERNA, JURISDICTIONIS PAROCHIALIS, die 22 Iunii 1805. Concilium Tridentinum, Sessio 24, cap. 13, de reformatione. In civitate Veliterna, iampridem, Parochus ad Sanctum Michaelem Archangelum et Parochus ad Sanctam Mariam e Trivio inter se contenderunt de iurisdictione parochiali in quamdam domum, quae antea familiae Toruzzi pertinuit, sed nunc nobili familiae Gratiosi. Discordiae causa plane videtur esse quod haec domus numquam per iurisdictionem Ecclesiasticam privative uni vel alteri adiudicata fuerit; confusionis vero origo ea fertur extitisse, nempe hanc domum unam evasisse ex duabus, brevi intercapedine divisis, quarum una in paroecia Sancti Michaelis, alia in paroecia Sanctae Mariae sita erat. Hactenus, ad discordiam conciliandam, permissa fuit cumulativa iurisdictio utrique parocho in eadem domo, uti aperte inter cetera testatur factum benedictionis Paschalis, quae successive ab uno alteroque parocho impertitur dictae domui in diem Sabbati Sancti. Sed haec munerum parochialium cumulatio in duobus parochis sane molesta evadit eiusdem domus inquilinis, itemque est non infrequens inter parochos controversiarum occasio. Quamobrem non semel conati sunt definitive quaestionem dirimere, cum alteruter parochorum sibi privative iurisdictionem parochialem vindicaverit. Ita, in possessorio, sub anno 1730, apud Curiam Veliternam, cum exercitium parochialium munerum interdicere Parochus ad Sanctam Mariam e Trivio Parocho ad Sanctum Michaelem conatus esset, hic obtinuit Interdictum Manutentionis, qua eius pacifica possessio earumdem iurium recognita fuit. Dein, in petitorio promota quaestione, placuit contendentibus per arbitrum compromissarium rem componere; electo in arbitrum eiusdem Curiae Vicario generali. Qui, die 27 Octobris 1752, consideratis considerandis, in hanc devenit sententiam; nempe sese censere aequalem esse competentiam.

COMPENDIUM FACTI.

[*Latin ed. p. 248*]

248 In VELITRIA, concerning the jurisdiction over the Toruzzi house, for both parish priests, and consequently, not only in the present case of the funeral of Eleuterius Toruzzi, but in all other matters, the canonical portion

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is to be divided equally between the two parish priests. It is evident that both parish priests of Lodi readily and willingly accepted this arrangement. Furthermore, the parish priest of S. Mariae reports that, in his allegations before the Sacred Congregation for Eastern Churches and the Roman Congregation, on May 6, 1870, this question was raised: Joseph Gratiosi, the owner of the disputed house, having two residences, one in Rome and one in Velletri, owned a house within the boundaries of two parishes, namely S. Mariae and S. Michaelis Archangeli, in Velletri. Joseph died in that city. It was doubtful to whom the fourth share of the funeral expenses should be assigned. The Fathers in the General Congregation considered it appropriate to respond in this manner: "Concerning the fourth share of the funeral expenses, it is to be divided between the same parish priest of the city and another parish priest from Velletri, within whose boundaries the main entrance is located." However, this response does not seem to have resolved the issue, since each parish priest claimed his own parochial boundaries, to which the main entrance belonged. Finally, this controversy arose again on the occasion of the death of a certain Caesar Avanzini, a tenant of the Gratiosi house, which occurred on May 22, 1893; indeed, the parish priest of S. Mariae, after having paid the just funeral expenses, refused to the parish priest of S. Michaelis Archangeli half of the profits, stating that he did so with the intention of finally bringing an end to the secular dispute through judicial authority. And in truth, the parish priest of S. Michaelis Archangeli brought this controversy before the Sacred Congregation of the Council, in order to have it considered, since each parish priest sought to claim, or at least have assigned to him, exclusive parochial jurisdiction over the disputed house. A Synopsis of the Arguments: DEFENSE OF THE PARISH PRIEST OF S. MARIAE. The parish priest of S. Mariae, from the beginning, reiterating the question, points out that the house of Gratiosi is part of...

[*Latin ed. p. 249*]

Veliterna, on the 24th of [month unspecified], affirms that it is certainly the more important and principal entity within the boundaries of the parish of Santa Maria, since a confusion of jurisdiction has arisen due to annexed properties located in the area called "della Barcaccia," which is within the boundaries of the parish of San Michele. Then, it is argued from the typography that there remains no doubt that the main entrance of said house is within the limits of the parish of Santa Maria; for the last house of the parish of San Michele Arcangelo, built on the side of the Palace, has the civic number 17, while the last house of Santa Maria has the number 16. Then, the same parish priest observes that the house of the Gratiosi family is very close to the parish of Santa Maria, being 117 meters away, while it is 205 meters away from the parish of San Michele Arcangelo. Finally, he points out that the constant desire of the owners of the aforementioned house to belong to the parish of Santa Maria is evident, as demonstrated

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by the uninterrupted use of receiving the sacraments and having funerals in the parish of Santa Maria, as clearly testified by Dominic Gratiosi in letters given to the current parish priest.

DEFENSE OF THE PARISH PRIEST OF SAN MICHELE.

On the other hand, the parish priest of San Michele Arcangelo, before directly asserting his right, attempts to prove that his adversary has asserted a falsehood, claiming that the Gloriosi family has always recognized San Maria as their own parish. For in the baptismal records of the parish of San Michele, the name of a certain Ange Graziosi, son of Francis Graziosi (head of his family), is recorded; and this man, for a considerable period of years, has in fact recognized San Michele Church as his parish. Therefore, he says, the adversary resorts to a fact that is destroyed by another similar fact; and furthermore, he seeks to prove that both parish priests have exercised jurisdiction promiscuously over the house of the Gratiosi family.

However, regarding the will of John Graziosi, expressed in letters, to now belong more to the parish of Santa Maria than to that of San Michele, the speaker exclaims that this is most arbitrary, exceeding the bounds of law, and indeed undermining the authority of the Church, which has the right only to designate parish priests. Furthermore, from this, two propositions can arise, according to the Sacred Canons.

[*Latin ed. p. 250*]

250 In Velletri, matters are entirely contentious: 1. because the boundaries of parishes could be altered by a mere layman, 2. because the boundaries of parishes could be uncertain, indeterminate, and changeable at the whim of laymen. Furthermore, the pastor, examining the matter closely, observes that it is either impossible or, at the very least, absurd that the Graziosi family, tracing its noble origins back to the Church of St. Michael, should now despise this ancient church and recognize the Church of St. Mary as its parish church. After these observations, the pastor proceeds to prove his right based on the fact that the Graziosi family, in reality, retained St. Michael's as their parish. For in the baptismal records, which are preserved in his church, he finds that Angelus Graziosi baptized children in the Church of St. Michael from the year 1747 until the year 1760, and that Franciscus Graziosi (the head of his family) likewise baptized his children there from the year 1783 until the year 1796; and from the year 1753 until the year 1801, the deceased members of the same family were buried in the parish of St. Michael. Finally, he notes that since the house of the Graziosi family was originally divided by a partition into two parts, one of which was located in the territory of St. Michael, and the other was located within the boundaries of St. Mary, due to the subsequent union of these parts into a single house, he has, until now, exercised a

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mixed jurisdiction with the pastor of St. Mary over the house of the Graziosi family; and this is evidenced by a decree of the Velletri court of the year 1730, and by a decree of the Arbitrator of the year 1752. Moreover, the pastor concludes, since the part of the house of the Graziosi family, which formerly belonged to a certain Berlecca and was located in the territory of St. Michael, constitutes the main part of the current house of the Graziosi family, nothing prevents the application of the well-known saying: "The greater part draws the lesser part to itself." The matter remains in doubt as to on whose side the favor of justice lies in this case, etc.

[*Latin ed. p. 251*]

VELITERNA RESOLUTION. 251. The Sacred Congregation, after deliberation on June 2, 1895, decided to respond: "The decision of October 27, 1752, shall be maintained." (1)

FROM THE HOLY CONGREGATION OF RITES, ROMA. Concerning the Beatification and Canonization of the Servant of God, Mary Aloysia Maurizi, a professed nun and vicarious of the venerable Monastery of the Mantillates, located on a hill near the city, of the Order of the Servants of the Most Blessed Virgin. Born in ROMA on September 27, 1770, to honorable parents, Ambrose Maurizi and Anne Albertini, she was baptized with lustral waters and given the name Hyacinth. From her very pious upbringing, instilled in her by her mother with the best and most virtuous morals, Hyacinth cultivated, with a particular zeal, the seeds of an excellent character and Christian piety, so that, growing in virtue with the passing years, she felt herself increasingly called to the chosen state of the Lord. As a young woman, torn between different paths in life, she went to the monastery named after the Infant Jesus, and there, through spiritual exercises guided by the Venerable Vincent Strambi, a priest distinguished for his prudence and holiness, and dedicated to the Passion, she was confirmed in her holy intentions and in her religious vocation. Subsequently, Hyacinth was received with great joy by all, into the Monastery of the Mantillates, of the Order of the Servants of the Most Blessed Virgin, in ROMA, founded by the illustrious family of Masturzi. Shortly thereafter, with the unanimous consent of her sisters, she was elected president, and transformed that place, which had been barren, into a flourishing garden through Christian virtues, regular observance, and the excellent education of young girls. However, the storms of the French sedition, spread far and wide throughout Europe, did not spare the esteemed city, and, with the sacred virgins being driven out of the cloister and dispersed, one of the nuns of the Mantillates, Alice, the founder of the monastery, who took Hyacinth as her companion, remained there (1).

(1) *Recole*, Volume V, 698, and Volume VII, 393. In the two questions presented there, a judgment was rendered in favor of the parish priest, in whose parish the main house in question was located, concerning which

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two parish priests were disputing.

[*Latin ed. p. 252*]

252 From the Sacred Congregation of Rites, permission was granted to await the passing of the turmoil and the storm. When public affairs were finally settled and peace was restored to the Church of Christ, and when Pius VII was elevated to the Chair of Peter, the canonical foundation of the Mantellate Order was benignly approved. Indeed, proceeding to the sacred temple, He, with solemn rites, clothed twelve young women in religious habit. Among them was the Handmaid of God, who, having relinquished the name Hiacyntha, took the name Maria Aloisia, and after completing her year of novitiate admirably and excellently, with great joy, she pronounced her solemn vows before the same Supreme Pontiff. It is worthy of praise that, diligently and piously fulfilling various duties, especially those of a Vicaress, she promoted regular discipline and perfection through her governance and example, and, always intent on heavenly and divine things, as she was taught by her confessor and master of piety, the Venerable Vincent Pallotti, she and her companions constantly sought to elevate themselves to God. In the month of May, dedicated to the Blessed Virgin Mary, in the year of the restored salvation, 1831, she was seized by a brief and fatal illness, and after being repeatedly strengthened with the food of the Eucharist, having lived through the sixty-sixth year of her life, on the ninth day of that same month, as she had foretold, having accumulated merits, as if rapt into an ecstasy of love, she ascended to heaven. Her precious death, which was immediately celebrated by the faithful who came to her tomb, was also followed by a reputation for holiness of life, virtues, and miracles, which grew more and more evident each day, along with the devotion of the faithful, who invoked the intercession of the Handmaid of God, and who sought her images and relics, so that an inquiry into this reputation was held by the Ordinary in the Roman Ecclesiastical Court. This inquiry, completed properly and presented to the Sacred Congregation of Rites fifty years ago, has resulted in the fact that the memory and praise of the extraordinary sanctity of Maria Aloisia still endure and flourish in the minds and mouths of the faithful. Therefore, Our Most Holy Lord Pope Leo XIII has benignly granted that the doubt regarding the signing of the introduction of the cause of the same Handmaid of God in the Ordinary may be resolved by the assembly of the Sacred Congregation itself, as is now the case. Therefore, at the urgent request of the Reverend Father Augustine Morini, Postulator of the General Order of the Servants of the B.V.M., and with attentive letters from many Eminences and Reverend Cardinals and Holy Prelates, in which many distinguished men of both the clergy and not

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a few religious were mentioned,

[*Latin ed. p. 253*]

From the Sacred Congregation of Rites, number 255, the relevant decrees are cited, and in the meetings of the Congregation of Holy Rites, held on the designated day at the Vatican, by the Most Eminent and Reverend Lord Cardinal Lucido Maria Parocchi, Bishop of Albano Laziale, and the Relator of the Cause, the following question was proposed for discussion: "Is the Commission for the Introduction of the Cause to be signed in this case, and for the purpose of what is being considered?" And the Sacred Congregation itself, after careful consideration of all matters, and after hearing the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided that: "The Commission should be signed, if it pleases the Most Holy [Pope]." On August 13, 1895. All of these matters were reported to His Most Holy Lord Pope Leo XIII in writing by the undersigned Secretary, and His Holiness, approving the rescript of the aforementioned Sacred Congregation, deigned to sign the Commission for the Introduction of the Cause of the Venerable Servant of God Mary Aloysia Maurizi, a Virgin, with his own hand, on the 26th day of the same month and year.

[Signatures: LUCIDUS M. CARD. PAROCCHI L. * S. ALOISIUS TRIPEPI, S. E. C. Secretarius]

The Most Reverend Lord Valerian Sebastiani, from the Prelates of Rome, who presides over the committee for the jubilee celebrations of Saint Joseph, the Patron of the Catholic Church in the City, instituted by His Holiness Pope Leo XIII, and under the protection and direction of Cardinal Parocchi, acting as His Eminence's representative, humbly requested: that on the third Sunday of Advent of the coming year, on the fifth and twentieth day, from the first day on which the illustrious Patriarch declared himself the Patron of the entire Catholic world, solemn Masses be celebrated in his honor in all churches, after which some preliminary preparation should be made through similar prayers. This preparation consists of certain pious exercises, either through continuous observance for seven weeks, on each Thursday of each week, or through a sacred novena, or at least through a solemn triduum. Furthermore, the aforementioned Orator requested that in all private Masses, which are celebrated in all places, [the prayers should include...]

[*Latin ed. p. 254*]

254. From the Sacred Congregation of Rites, it is possible that the commemoration of the aforementioned Patron [St. Joseph] may be celebrated on the same Sunday in all churches. The following decree, which answers the request, is promulgated for the City [Rome] and the whole world. Privileges are granted, upon the return of the twenty-fifth year since St. Joseph

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was declared the patron of the entire Catholic world. The Most Holy Lord, having received these petitions, reported by the undersigned Secretary of the Sacred Congregation of Rites, and having received them with the highest commendation from the Most Eminent and Reverend Cardinal Vicar of the City, has deigned to grant the following:

I. That on the third Sunday of Advent, this year only, in all churches of the City and the world, where the pious exercises mentioned in the prayers are performed, a single solemn votive Mass may be celebrated for the Patronage of St. Joseph, Spouse of the Virgin Mary, with the Gloria and Creed sung; provided that a Double of the first class does not occur, nor is the Conventual or Parochial Mass, corresponding to the Office of the day, omitted, where the obligation to celebrate it exists.

II. That on the aforementioned Sunday, in all Masses celebrated throughout the world, where a Double of the first class does not occur, the commemoration of the same St. Joseph may be added through prayers taken from the Mass of Patronage, observing the rubrics. Contrary provisions notwithstanding.

August 12, 1895.

CAIETANUS CARD. ALOISI-MASELLA, S.R.C., Prefect.

L. © S. ALOISIUS TRIPEPI, S.R.C., Secretary.

[*Latin ed. p. 255*]

255 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE CANARIAS. It is permitted to call a confessor by telephone who is located far from the monastery of the Religious.

Most Blessed Father, the Bishop of the Canaries, having prostrated himself before Your Holiness, reverently explains: that since the confessor of the Cistercian nuns of stricter observance resides far from the monastery of said nuns, it can happen, as has indeed occurred, that some of the nuns, without the help of religion, may fall away from the life. For this reason, so that similar things may not be repeated due to the distance, the Orator was requested to seek permission to use a new invention, commonly called the telephone, from the monastery to the confessor's home. Nevertheless, due to the novelty of the matter, from which, certainly, dangers could arise, even with the greatest diligence, the Holy Congregation deemed it advisable to seek the opinion of the Sacred Congregation before granting this permission. Wherefore, etc.

By virtue of special faculties granted by the Most Holy Lord, the Holy Congregation of Eminent and Reverend Cardinals, entrusted with the affairs and consultations of Bishops and Regular Canons, benignly grants the Orator, the Bishop, the permission mentioned above, having considered the necessity of merely notifying the Vicar, in accordance with the requests made, with the due precautions taken to prevent any inconvenience from

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arising; and especially, that in the act of calling the Vicar by means of the aforementioned medium, two nuns, chosen from among the most virtuous and senior, must be present to hear the words spoken; and the Bishop shall remain burdened with the knowledge of this matter, notwithstanding anything to the contrary.

Rome, March 20, 1895.

I. CARD. VERGA, Prefect.

[*Latin ed. p. 256*]

256 FROM THE HOLY CONGREGATION OF INDULGENCES: An Indult is granted, whereby dispensation is given from the new blessing for the Scapulars of the Most Holy Trinity, when another is taken by the faithful after the first has been worn out or consumed. Most Blessed Father, Father Stephen of the Most Holy Heart of Mary, of the Order of the Most Holy Trinity, Spanish Congregation, Apostolic Commissary, prostrate humbly at the feet of Your Holiness, presents the following: that members of the sodality of the Most Holy Trinity may take and wear upon themselves a small habit, or scapular, made of white wool, adorned with a red and blue cross, blessed by a superior of the Order: but, it is expressly stated in the Summary of Indulgences granted to the members of the Most Holy Trinity, under pain of the loss of Indulgences, that when such a scapular has been worn out or consumed, and another is taken anew, it must be blessed anew. This, however, is the reason why many faithful attached to the aforementioned sodality are often deprived of the Indulgences granted to them. For it does not always happen that a superior of the Order of the Most Holy Trinity, or another priest, even a secular one, with the permission of such a superior, is available to bless a new scapular for every faithful person in need. Wherefore, in order to provide for the spiritual well-being of those attached, the undersigned humbly implores Your Holiness to deign to grant a dispensation from this law, so that in the future, whoever has received a blessed scapular for the first time, if it has been worn out or consumed to the point of losing its original form, may be given another, even if not blessed, without the loss of Indulgences; and thus, uniformity may also be maintained with regard to this scapular, since the scapulars of other various confraternities are not blessed except the first time, that is, when they are first imposed upon the faithful, giving to each member the power to take another afterwards without a new blessing. And God, etc. The Holy Congregation of Indulgences and Sacred Relics, exercising the faculties granted to it by His Holiness Pope Leo XIII, having considered the matters presented, and especially, in order that uniformity may also be introduced with regard to the Scapular of the Most Holy Trinity, as is the case with others, and in the first place, with the Carmelite scapular, which is blessed only the first time, that is, when it is first imposed upon the faithful, benignly grants the grace requested, contrary to any objections. Given

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in Rome, from the Secretariat of the aforementioned Holy Congregation, on the 24th of August, 1895.

[*Latin ed. p. 257*]

257 APOSTOLIC LETTERS from the Most Holy Pope Leo XIII, concerning the Patriarchate of Alexandria of the Copts. The Lord Jesus Christ, Redeemer of the human race, Author and Preserver of the Church, constantly urges Us, and We strive with all the sanctity of Our office to promote divine charity and salvation. And We owe much gratitude, which We sincerely acknowledge, that He has been so gracious and helpful to Us in all matters concerning the Catholic name, whether in introducing it to peoples, restoring it, establishing it, or increasing it. And We also give thanks in a special way for certain events that have occurred in the past two years, which have allowed Us to pursue the growth of the Catholic cause with greater zeal and effort. But the reasons for these events, which We have seen fit to employ, both in general and in particular, through Apostolic Letters, have not been without fruit, and, with divine grace, have ceased to be: and so We continue on the same course, joyfully anticipating the daily outcome of our endeavors with confident expectation. Now, among other nations and the Church of the Copts, We consider them with particular care, and We intend to decree certain things specifically for their good and benefit, by virtue of Our Apostolic authority. A few months ago, We addressed the Coptic people in a letter of Our own, and We recalled the monuments of the ancient Church of Alexandria; and We did this with a twofold purpose, namely, that Our benevolence and exhortation might strengthen the Catholics in their union and faith with the Apostolic See, and that those who are separated might be invited to seek and renew that same union. In both respects, We have found solace in the hopes that were conceived. The Catholics, first of all, as was fitting, have testified to Us with the greatest obedience and piety, as children should; moreover, they are grateful that We have appointed a bishop from among their people, the Venerable Brother Cyril, to the office of Apostolic Vicar, according to their wishes, with the title of Caesarea Paneadi. Furthermore, in order to declare their will more openly, they undertook to send a public embassy to Us; and this, certainly, in Acta, Vol. XXVIII, p. GGGXXIX. 17.

[*Latin ed. p. 258*]

258 APOSTOLIC LETTERS could not be more pleasing to them, nor more delightful to Us. — Therefore, in the month of September, a delegation of Copts, from various orders of the nation, was presented before Us, led by the Most Reverend Father, a most welcome sight. From them, We learned most clearly how devoted they are, in the name of their citizens, to this most blessed See of Peter, with what zeal, what reverence, and what obedience; and this stirred within Us the deepest feelings of paternal char-

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ity, as they expressed their trust in Us regarding their own affairs and the expulsion of dissenting brethren, and they hoped for greater support. And they made it clear that this was of the utmost importance, and with more humble prayers they implored that the Catholic hierarchy and patriarchal dignity among the Egyptians might be restored by Our authority. — A just and timely request, which convinced Us for many reasons. For it is clear that the progress of the Catholic faith is not insignificant daily in Egypt; native clergy and priests are being increased in number, which is of the greatest importance; schools for youth and similar institutions of sound instruction are being multiplied; and the love and worship of religion are flourishing in the hearts of the people, and abundant fruits are being produced. In this, the zealous work of the clergy is greatly aided and sustained by several religious communities: and praise is due to the Franciscans, who have long labored in those regions, and to the members of the Society of Jesus and the missionaries from Lyons, whom We ourselves have endeavored to assist. — Indeed, if the hierarchy were to be restored there, even in part, and certain pastors appointed, then, with greater and more expeditious vigilance and care, a multitude of benefits would certainly flow to the clergy and the people. Moreover, the patriarchal dignity would be of great benefit, both in its extent to enhance the prestige of the Coptic Catholic Church in the eyes of others, and by its inherent power to strengthen the bonds of faith and fraternity in every way. — After carefully considering the whole matter and deliberating with the Council or Commission of Cardinals of the Holy Roman Church, which We commanded to be present to promote the reconciliation of the dissenters with the Church, We ourselves judged that We should grant the request of the Copts. Therefore, for the greater glory of the Divine Name, for the growth of the holy faith and the Catholic communion, We, with certain knowledge and of Our own accord, and by the fullness of Our apostolic power, restore the Catholic Patriarchate of Alexandria and establish it for the Copts; and We grant to it and to all who shall hold it, all honors, privileges, prerogatives, titles, and every power.

[*Latin ed. p. 259*]

We grant the apostolic title, in the same manner as is generally now exercised by the Eastern Patriarchs: that is, with specific prescriptions issued by the Apostolic authority, according to time and place. To the patriarchal seat, we decree two suffragan sees; one in the city of Hermopolis Major, commonly called Minieh, and the other in Thebes, or Diospolis Major, near the city of Luxor, so that the Patriarchate shall consist, for the present, of three dioceses, namely the patriarchal diocese of Alexandria, Hermopolis, and Thebes: nevertheless, We and Our successors retain the full and proper right to establish other sees, whether archiepiscopal or episcopal, and to change those already existing, as necessity or the good of the Church may require. The Coptic Patriarchate of Alexandria, thus established, shall ex-

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tend as far as the Kingdom, or Khedivate, of Egypt properly so-called, and the province of preaching of Saint Mark, and We establish and confirm this. – We deem it fitting to define the boundaries of the individual dioceses as follows. The patriarchal diocese of Alexandria includes Lower Egypt and the city of Cairo. To the north, it has the inner sea, or the Mediterranean; to the east, the Suez Canal; to the south, the thirty-third degree of latitude; to the west, the province of Tripolitania of the Ottoman Empire. – The diocese of Hermopolis extends into Middle Egypt. To the north, it borders the patriarchal diocese; to the east, it reaches the Gulf of Hermopolis; to the south, it is contained within a circle approximately between the twenty-seventh and twenty-eighth degrees of latitude, where, indeed, lies the place called Sact-moussé on the Nile River, which also lies within the jurisdiction of the same diocese; to the west, it has the Libyan Desert. – The diocese of Thebes, extending into Upper Egypt, is bounded to the north by Hermopolis; to the east, by the Arabian Gulf; to the south, by the twenty-second degree of latitude; to the west, by the Libyan Desert. We reserve the right of designating both the Patriarch and the suffragan Bishops for this Apostolic See. In the meantime, until such designation is made, We command that the administration of all the Coptic Catholics throughout Egypt remain with the same venerable Brother Cyril, by our apostolic authority. Thus, We rejoice greatly in the Lord in being able to provide for the restoration of the Patriarchate of Alexandria for the Copts; and even more so because this event has occurred at a time so pleasing to the Church.

[*Latin ed. p. 260*]

260 APOSTOLIC LETTERS, most pleasing. For the reason that it was founded by Mark, most blessed disciple and interpreter of Peter, and was governed piously, a certain and more illustrious bond arose between it and the Roman Church than we have seen in other cases; and through this very connection, it flourished for a long time, both in the excellence of virtues and in the brilliance of doctrine. Therefore, it is our most fervent desire that the dissenting Copts should consider the Catholic hierarchy before God in truth; namely, that which, because of its communion with the Chair of the Prince of the Apostles and his successors, alone can legitimately refer to the Church founded by Mark, and alone is the heir to all that was faithfully transmitted to the Patriarchate of Alexandria by those ancient forefathers. May it come to pass, as the uprightness of their minds and the benignity of divine grace strongly urge us to hope, that, having finally abandoned and composed the dissensions which have arisen and have endured for ages, they may return to the unity of the Roman Church, which awaits them with great desire for charity. We decree that these Our Letters and everything contained in them may never, at any time, be noted or impugned for any flaw of deceit or fraud, or for any other defect of Our intention, but that they shall always be valid and firm, and shall have their

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full effect, and shall be inviolably observed by all, whatever their rank. Notwithstanding any Apostolic Constitutions, and any synodal, provincial, or universal Councils, general or special, and other contrary things, even those particularly worthy of mention: to all of which, as far as necessary, we grant the broadest exemption; and we declare them null and void, if anyone, knowingly or unknowingly, should attempt to alter them in any way. We wish that these Letters, even in printed form, should have the same validity as if they were handwritten, subscribed by the Notary, and sealed with the seal of a man of established standing in ecclesiastical dignity. Given at Rome, at St. Peter's, in the year of the Incarnation of the Lord, one thousand eight hundred and ninety-five, on the sixth day before the Kalends of December, in the eighteenth year of Our Pontificate.

A. CARD. BIANCHI C. Pro-Datary

CARD. DERUGGIERO.

[*Latin ed. p. 261*]

261 FROM THE HOLY CONGREGATION OF THE COUNCIL OF COLONIA, REGARDING A DISPENSATION FROM IRREGULARITY. May 25, 1895. Through summary petitions. SUMMARY OF THE CASE. Johannes Kebren, of the Diocese of Colonia, currently engaged in literary studies at the Kempensi Gymnasium, desires to dedicate himself to the clerical life with a fervent desire; however, he is hindered by a serious defect in his left hand, which is malformed. Therefore, he presented a petition to the Most Blessed Father, in which we rejoice, so that he may be benignly dispensed from such a defect of irregularity. The Most Eminent Archbishop of Colonia strongly commends these petitions, stating: "Indeed, the cleric cannot perform all the ceremonies of the Mass. However, the Reverend Feiten, already a professor of theology at the University of Bonn, who prepared him for his First Communion; the Reverend Ferwelp, professor of religion and teacher at the Kempensi Gymnasium, who instructed him; and the Reverend Kerp, vicar at St. Mauritius in this city of Colonia, who knows the cleric and his family intimately, all with one voice affirm that he possesses exceptional qualities of mind and character, and that he is progressing excellently in his studies, and that he is distinguished by unimpeachable morals and piety; therefore, it is to be hoped that he will become an outstanding priest, even though, due to the deformity of his hand, he will scarcely be able to be employed in the care of souls. I commend the petitions of the cleric to Your Eminence." THE MASTER OF CEREMONIES REPORTED: "Johannes Kehren has a left hand that is malformed from birth. Only the thumb is well-formed; the other four fingers are conjoined and joined together by a membrane;

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moreover, they are..."

[*Latin ed. p. 262*]

262. "The fingers of the left hand are shorter than those of the right hand, so that they do not exceed half their length. They are soft and weak, like the fingers of a child. Even the thumb and the rest of the left hand are smaller than the thumb and the rest of the right hand." "This deformity of the left hand prevents the priest from separating the index finger from the other three fingers, so that he cannot properly and according to the rubrics perform the following actions of the Holy Sacrifice." "After the consecration, according to the instructions of the rubrics, the priest does not separate the thumbs and index fingers, except when he must touch or handle the consecrated Host, until the washing of the fingers after Communion." "The priest cannot observe the instruction of the rubrics concerning the left hand in the following cases: 1) Immediately before the consecration of the chalice." "The priest, with both hands, that is, with the thumb and index finger joined, receives the chalice near the knot below the cup, raises it slightly, and immediately sets it down. – Rubric." "The priest opens his left hand, separates the thumb from the other fingers, and receives the chalice between the thumb and the hand, that is, between the ulnar side of the thumb and the radial side of the metacarpus, in a manner that is sufficiently firm and secure. He could not enclose the knot with his left hand and hold it with the thumb and index finger joined, because the fingers are too short." "2) Before the recitation of the Lord's Prayer." "The priest holds, that is, with the thumb and index finger joined, the chalice with his left hand below the cup and raises it slightly, saying: 'All honor and glory.' – Rubric." "The priest separates the thumb of his left hand from the other fingers and holds the chalice, as above, between the thumb and the metacarpus." "3) At the moment of the reception of the Host, the greatest difficulty arises." "The priest takes both parts of the Host with his right hand and places them between the thumb and index finger of his left hand, which are positioned between the same index finger and the middle finger, holding the paten."

[*Latin ed. p. 263*]

COLON 263. He supports [the chalice] and, with the same left hand, also holds the paten between his chest and the chalice. – Rubric.

"The minister cannot, by any means, place the paten between the index finger and the middle finger, because the index finger is completely joined and connected with the other fingers."

"The minister holds the paten in such a way that he places it between the thumb, the ulnar side of the hand, and the radial side of the metacarpus; he can also, while holding the paten in this way, hold both parts of the host together, superimposed, between the thumb and index finger, provided

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that they extend beyond the edge of the paten."

"4) In the distribution of the Holy Communion during Mass, and in the purification of the chalice, the same difficulty arises. – The minister separates the thumb from the index finger in order to hold the chalice, or the ciborium."

"Therefore, it has been demonstrated by experiment that the minister is not able to perform all the sacred rites of the Sacrifice properly and according to the rubrics. – If, however, a dispensation from the strict observance of the rubrics can be granted, it seems permissible to admit that the possibility of offering the sacrifice exists."

"Furthermore, it is to be noted that the doctors deny that the deformity, with which the minister suffers, namely, the separation of the index finger from the other three fingers, can be corrected by surgical operation, at the age in which the minister now finds himself."

"It should also be observed that, if the minister were to obtain a dispensation to be promoted to the sacred order of the priesthood, he would not be able to perform the actions of taking the host, the paten, and the chalice in the manner prescribed by the rubrics."

"The bishop gives to each [candidate] by ordaining, the chalice with wine and water, and the paten superimposed with the host, and he himself receives them between the index and middle fingers, and touches both the rim of the chalice and the palm of the hand together. – Rubric."

"The minister can only touch the rim of the chalice and the paten together with the right hand; the left hand, however, can only touch the paten with the host, without simultaneously touching the chalice."

[*Latin ed. p. 264*]

264 COLOGNE. Several factors appear to oppose the granting of a dispensation. Firstly, in the very reception into the Holy Order, the Orator cannot fulfill the sacred ceremonies, because he would not be able to "perform the actions of the host, paten, and chalice in the manner prescribed by the rubrics." Furthermore, John would not be able to administer Holy Communion to the faithful during Mass, which, to omit, is profoundly contrary to the spirit of the Church, as taught by the Council of Trent, Session 13, chapter 6. Moreover, in the Old Testament itself, those who suffered from a notable bodily defect were carefully excluded from serving at the altar. Therefore, this should be even more strictly observed in the New Testament; hence, defects are diligently established in the collection of the Apostolic Canons. Subsequently, irregularities were defined in a precise and rigorous manner, so that a dispensation was granted only to those already advanced towards the Orders, so that "affliction would not be added to the afflicted." Nevertheless, in chapter II, concerning a sick cleric, the celebration of Mass is forbidden to a presbyter to whom two fingers, along with half of the

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palm, had been severed from the hand. And the Sacred Congregation, in Burgen, on January 24, 1864, denied a dispensation to a certain Joachim De Zayas, who had contracted a condition due to the burning of the tendons of the thumb and index finger of his right hand, and who lacked half of the phalanges of each finger, even though the favorable opinion of the masters of ceremonies and the recommendation of the Archbishop were added to his prayers.

A DISPENSATION SEEMS ADVISABLE. But rather, weighty reasons suggest that indulgence should be granted. Above all, the Orator's commendable character, his intelligence, and the scarcity of priests in the Diocese of Cologne, which are attested to by most distinguished men, certainly move one to grant a dispensation. This does not seem entirely prohibited by the defect in the left hand with which the Orator, John, suffers.

A DISPENSATION SEEMS UNDESIRABLE.

[*Latin ed. p. 265*]

COLONIES. 265. It is permitted, if it is not possible to perform the simultaneous touching of the sacred vessels required by the rubrics, that this be considered an accidental deficiency which can be fully remedied by successive touching. However, there are abundant examples in the Sacred Congregations concerning dispensations from such deficiencies in the celebration of the Mass, by which the rigor of the canons has been tempered with benevolence. Indeed, in Pampelona, on March 31, 1860, a dispensation was granted to a cleric to use his left hand in the sacred ceremonies of the Mass, because he was unable to make the sign of the cross with his right hand, nor to bring the chalice to his lips. Thus, in Cephalonia, on June 16, 1866, a dispensation was granted to the cleric Joseph Gianni, who was lacking the thumb on his left hand; and more recently, in Novara, on June 27, 1891, although the orator was lacking one phalanx on the thumb and two phalanges on the index finger of his right hand; and in Como, on February 27, 1864, a favorable response was obtained by a certain Fogli, who, "suffering from a perfect ankylosis in his right knee (as stated in the same document), cannot bend it down to the ground, but can only perform a partial, so to speak, genuflection." Similarly, in Ausculana, on February 20, 1808, etc.

Considering these matters, the question arose as to what should be answered in the prayers.

RESOLUTION. The Sacred Congregation, after deliberation on May 25, 1895, decided to respond: "At the discretion and conscience of the Archbishop, provided that a true necessity of the Church exists, the following is to be done, with the words: 'SS. CAIETANA, MISSAE PRO POPULO.' On May 25, 1895. Through summary prayers. The parish priest of the Church

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of St. Michael in the Apostolic State of Valliscursae, Archbishop."

COMPENDIUM PACTI.

[*Latin ed. p. 266*]

266 The diocese of Gaeta, which belongs to the Kingdom of Naples, has stated: that its predecessors, as can be ascertained from ancient records, never celebrated Mass for the people on the feast of the Visitation of the Blessed Virgin, nor on the feast of the Presentation of the Blessed Virgin; these two days being observed as holy days in the Kingdom of Naples, but are weekdays in the Pontifical State. The present Archbishop, after the first Visitation, added the following decree to the book of Masses for the people. This book, in which are recorded the Masses for the people celebrated by the Abbot of the parish church of Saint Michael the Archangel in the territory of Valliscursa, from the month of November 1889 until the present time, has been examined and approved by us. We command the Abbot to conform to the diocesan calendar with regard to the celebration of Masses for the people, so that no Mass for the people may be omitted; and to celebrate the ten Masses that were not celebrated, namely, on November 21, 1889, on July 2, August 15, and November 21, 1891, on July 2 and November 21, 1890, on July 2 and November 21, 1892, and on July 2 and November 21, 1893. Given at Valliscursa, on the first Visitation, on the day of June 30, 1894. Franciscus, Archbishop of Gaeta. Vincentius, Canon Colavolpe, Visitor. James, Canon Niola, Secretary. Now, for the sake of his own conscience, and so that he may not add a new burden to his successors, the aforementioned [person] requests from the Apostolic See whether, on the two aforementioned days, he is obliged to celebrate Mass for the people, which has never been done. The Archbishop, having inquired for information and to consider the request, responded as follows: The diocesan calendar should be considered as the norm to be followed by the clergy with regard to the Divine Office, the celebration of Masses, and the rites; so that no priest can be dispensed from this law. Now, the Ordinary states, he cannot see how the aforementioned [person] could exempt himself, for only these two days, from the diocesan calendar, and follow the Roman Order of the Divine Office. Two other parish priests, besides the aforementioned [person], were present.

[*Latin ed. p. 267*]

GAETA, with 267 additions, who also rejected the decree issued for them during the sacred visitation. He does not believe that the custom brought by the advocate, which would stand against the general law, obligating other parish priests of this Archdiocese, is beneficial; nor does he believe that the Sacred Congregation of Councils, on September 25, 1847, rejected the custom presented in a certain Meklinian case; nor did he add that Vallecursam

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is in the Roman Province; for this has some weight only with regard to the privilege of the Bull of the Cross, granted to the Neapolitan Provinces.

A Synopsis of the Discussion: And in truth, the response of the Sacred Congregation of Councils in the aforementioned Meklinian case of September 25, 1847, seems clearly to favor the intention of the Archbishop, for among other things, regarding the proposed doubt: "Can a custom ever be considered legitimate, by virtue of which parish priests do not apply the Holy Sacrifice of the Mass for the people on Sundays or at least on the aforementioned feast days?" the response was "No." And in a certain document from Gaeta, dated January 20, 1838, concerning the second doubt, the parish priests were judged to be still bound by this obligation, even though more than forty years had passed since the suppression of feast days. Moreover, the Sacred Congregation of Councils, in its responses to the reports of the Bishops, urges the observance of this precept, and inquires whether a custom exists or not. This principle of common law had already been declared and affirmed by Benedict XIV in the Constitution "Cum semper oblatas"; in general, a custom, whether memorable or not, cannot in any way benefit the parish priests.

THE PARISH PRIEST SEEMS NOT TO BE OBLIGATED. However, the parish priest, struck by the decree of the Bishop, claims that he is not subject to the general obligation previously explained, but believes that he is not subject to it because, in his parish, which is within the territory of the Holy See, the days noted in the decree by the Bishop have never been considered feast days, and therefore they could not have been subject to suppression.

However, it seems clear that an obligation cannot be imposed for non-feast days in the diocese either by the diocesan calendar or by the synod itself; therefore, THE PARISH PRIEST SEEMS TO BE OBLIGATED.

[*Latin ed. p. 268*]

268 Gaeta teaches, as Benedict XIV states in *Institutiones*, Book X, where, under number 4, he cites that the Sacred Congregation of Councils, on February 8, 1726, responded: "Parish priests, even though they possess considerable revenues, cannot be compelled to offer Mass for the people on weekdays." However, this same Supreme Pontiff seems to solemnly prescribe the same in the aforementioned Bull "Cum semper oblatas," where, under number 6, he again emphasizes that in Synods, the feast days should be declared, on which the parish priests are obliged to offer Mass for the people; but he expressly cautions that they are not bound to do so except on feast days, and on weekdays only if they are holy days. With these points noted, the question arose as to what should be answered in the prayers.

RESOLUTION. After discussion by the Sacred Congregation on May 25, 1895, it was decided to respond: "They are not bound."

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BOSNIA. OR SARAJEVO. CONCERNING THE COHABITATION AND COMMON LIFE TO BE OBSERVED BY THE CANONS OF THE CATHEDRAL CHAPTER.

June 22, 1895.

Through summary prayers.

The Archbishop of Sarajevo, Joseph Stadler, addressed these supplications to the Most Blessed Father, from whom we so earnestly await a response: "When I came to Sarajevo, I endeavored that my canons might lead a common life. Three of them did so: they lived together in the same house, and ate together, using the same service, and living as in a monastery. When I proposed a fourth canon to be appointed by His Imperial Majesty, Emperor Francis Joseph I, I told him that I wished him also to lead a common life, even more so, because the canons' house had been made in such a way that the four persons, who constitute my Chapter, could conveniently live there. I believe that I made this a quasi-necessary condition for his appointment as a canon, namely, that he should lead a common..."

COMPENDIUM OF THE MATTER.

[*Latin ed. p. 269*]

BOSNIA. OR SARAJEVO. 269, while the others led a life according to the canons; but he, on the contrary, now affirms that I said nothing in my letters about such a condition; but rather that he later brought up this desire. It has happened that this fourth canon also has been living a common life with the others for about twelve years." "Since the canons' house today is uninhabitable and very far from the cathedral church, my canons decided, at their own expense, to build a new house not far from the same church, in which all the canons would again live together. One of the four canons has died. I have proposed another to take the place of the deceased canon, who has not yet been named, but there is hope that he will be named after a few months. To this man also, I said that I would not propose him to be a canon unless he promised me that he would live a common life with the others, which he promised me. But now, when everything is ready to build the new house, one of these three canons, and indeed the one designated last (the fourth), wants to live in the same house, but does not want to live a common life with the others." "Since the common life among the canons is a matter of the utmost importance; since my canons have been living a common life since 1882 until now; since, in my judgment, such a life of the canons is conducive to the edification not only of the faithful, but also of the unbelievers; since such a way of living greatly contributes to fostering the spirit of Christ and preserving mutual charity; since this is the first time that one of the canons wants to separate himself from the common life against my will and against the will of the other canons, which is a step

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for the worse, not for the better; I humbly beg Your Beatitude to decide, by Your authority: "1. Whether the Archbishop of Vrhbosna may impose a condition before proposing someone to be a canon, that he live a common life with the other canons; and whether such a canon, who has approved the imposed condition before being named, is bound in conscience, after being named, to live a common life with the other canons?"

[*Latin ed. p. 270*]

270 BOSNIA. OR SARAJEVO. « 2. Whether that canon, who, according to my advice, has hitherto lived in common with the other canons for twelve years, ought to continue in that same way, or whether it would be better if he were allowed to remain in his own intention, and, furthermore, if his successor were to be urged to lead a common life ». « Also, the manner in which *nova domus* is to be established depends on the solution of either of these points. For it will be done differently if it is decided that, in this case, only cohabitation is necessary, and differently if a common life is also to be continued ». On November 20, 1894, a rescript was written: "To the Archbishop who has heard the case of the Chapter and separately of the canon, who refuses to live in common." The Archbishop, having obeyed the precept of the Sacred Congregation, sent the canons' responses to the same. A Synopsis of the Discussion. Firstly, it was noted here that we are not speaking of a common life to be led in the manner of religious orders, bound by simple or solemn vows, but rather of cohabitation, and of common food and service, with each canon retaining free disposal of his own property, provided that their freedom is not bound by a vow of obedience. The Archbishop most earnestly desired to introduce such a way of life among his canons, so that, free from family affairs and the distractions of women, they might devote themselves entirely to the good of the Church, assisting the Archbishop with counsel and work. In this intention, the Most Reverend Archbishop was strengthened because, hitherto, the canons, although not bound by a positive obligation, have lived in such a common way, to the edification and admiration of both the faithful and the non-believers, or schismatics, among whom they live. Therefore, he wished, if possible, to introduce an obligation of this way of life into the founding documents, so that new canons to be named would be co-opted into the Chapter under this expressly stated condition; and those who already possess the canonry, especially those who have already lived in this way for so long, and... "

[*Latin ed. p. 271*]

BOSNIA. OR SARAJEVO. 271. The aforementioned reasons having been presented, and the intention of the Archbishop being clearly understood, they were compelled to persevere in their sacred purpose. This matter, indeed, requires a solution, because a suitable house must be built, one

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that corresponds to the quality of life desired by the canons. Therefore, it is permissible to note that the Archbishop, in arranging the foundation of his Chapter, has acted prudently by avoiding extremes, and by seeking a middle ground, in accordance with the Chapter's constitutions. For, between the common life of Religious and the life of Canons separated from community, living in their own families, there exists a commendable way of life in which the canons, residing in a communal house, are also invited to the common table, and are gently and firmly encouraged to participate, so that, however, those who, for a reasonable cause, do not accept this invitation, should not thereby be subject to any exclusion from communion. In this way of life, it also seems easy to prevent the canons from living with women, and to keep them entirely free from worldly affairs and tranquil. Of the four canons, two love and desire this common life, while the other two, admiring this life, greatly fear its inconveniences and do not dare to bind themselves to it by obligation. Those who embrace this common life, and expressly accept it by obligation, extol its excellence and utility, hoping that great fruit will result from it for the entire Archdiocese. These are: first, the Reverend Anthony Jeglie, Archdeacon of the Chapter of Vrhbosna and General Vicar; and second, the Reverend Stephen Hadrovich, Canon of Vrhbosna. It is not necessary to dwell long on reporting these responses, since they pursue a life that is praised by them, and even admired by those who disagree with it; however, they contend that they are not responding to the proposal because of the Chapter's constitutions, and this is indeed the question. For the Reverend Andrew Jagatic, Archdeacon of Guejagore, in the archdeaconry of, Canon of Vrhbosna, in his vote, first pointed out that this is not about a common right, but about a particular...

[*Latin ed. p. 272*]

272 BOSNIA. OR SARAJEVO. Concerning the introduction of regulations by the Chapter. Therefore, he notes that this obligation cannot be declared to apply to those who are designated as canons, unless this condition is explicitly added. Furthermore, he judges that it would be useful, both for the Chapter and for the Archdiocese, to introduce this obligation in the future. First, not for the Chapter, because in the election of canons, the Chapter itself has no legal authority. However, experience shows that the Archbishop could, in fact, exert such influence that those whom the Chapter desires would be included among the canons. Secondly, if those who are added to the Chapter cause discord, there is no easy remedy, such as transferring them from one house to another, as is done in properly religious families. Secondly, he argues that this would not be beneficial for the Archdiocese itself, because the Archbishop's advisors would be included in the Chapter, among those parish priests who have diligently served in the sacred ministry for a long time. However, a man, even if most holy, finds it difficult to embrace a communal life like that of religious,

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because he will not be able to adapt to it due to his already established way of life. Furthermore, he considers the weakness of human will, as it is truly said, "we strive for the forbidden," and therefore, according to the Archdeacon, the communal life, which has hitherto been carried out spontaneously and peacefully among the canons, might be completely disrupted by the introduction of such an obligation. Therefore, he concludes that, by rejecting the explicitly stated obligation of communal life in the founding documents, it is possible to achieve greater benefit if the canons live together comfortably in a specially constructed house and also share a common table, unless someone is legitimately excused for serious reasons. Another canon, John Koscak, who is not of this kind of communal life, uses a similar argument. The Archbishop noted the disagreement between these two canons: "As it appears from their responses, two out of my four canons are in favor of a communal life, while two are against it. Of the two who are against it..."

[*Latin ed. p. 273*]

BOSNIA. OR SARAJEVO. 273 Thus, one is against the strict obligation, namely, Reverend Father Jagatic, although he seems prepared to live the common life freely until death; the other, Reverend Father Koscak, will indeed live with the other canons, but will never embrace the common life. "Given these circumstances, I come to examine the opinion of each of the canons. Before doing so, I must generally observe that I was unable to impose, upon the first canons, the condition of belonging to the canonry, that any of them be obligated to live the common life, since at that time none of us knew how things would unfold in Bosnia; nevertheless, on many occasions, I showed that I found the common life of the canons to be very pleasing, and I spared no effort to encourage each of them to embrace the common life in a pleasant manner. But when I saw that, with the passage of time, one or another of the canons might be separated from the others, then I expressly told Reverend Father Hadrovic, the successor to the deceased canon Deric, that I would retract the proposal (to be named a canon), unless he agreed to live the common life. And he agreed. When, after these things, Reverend Father Koscak, without consulting me or the other canons, separated himself from them, then I reminded him of how, from the very beginning, for the sake of a certain person to whom he should be grateful, he wished to live alone, and how, with my consent, he refrained from his intention and lived the common life for twelve years. On this occasion, I asked myself: can I impose such a condition, that they live the common life? And, supposing that a canon to be named accepts such a condition, is he bound to observe it, so that he may even be compelled to observe it? Then, Reverend Father Koscak availed himself of his own right to separate himself from the others without my knowledge and without the knowledge of the other canons. Therefore, I have come to the point of

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questioning the decision of Your Eminence, which ordered that the canons be invited to reveal their opinion on this matter. I must still observe that we are all, myself included, bound by the decree of the Holy Council of Trent, Session XIII, Chapter VIII, which states:

[*Latin ed. p. 274*]

274 BOSNIA. OR SARAJEVO. The canons, having arrived here at the beginning of 1882, and the Reverend Dominus Kriéak having been appointed to the canonry some months later. "The Reverend Father Andreas Jagatic, as my general vicar, the Reverend Father Jeglic, related to me, has frequently stated that he wishes to lead a common life in every way until death, but that he does not wish to be obligated to lead such a life. This is evident from his own arguments. Therefore, he demonstrates at length that it is more important to preserve freedom and to decide for oneself freely, than to bind and restrict one's will to a common life. If this argument held any weight, we would have to deny that a vow is a better good, and that the very commandments of God should be abolished, since they bind the freedom of our will; indeed, it would follow that we cannot enjoy freedom in the observance of commandments. And yet, we are most happy in the observance of commandments, and the commandments of God and the Church are highly desirable, although they impose an obligation on all, and a vow, although it restricts freedom, leads a man, whose lower part does not wish it." "Regarding the twofold objection: that a common life would not be beneficial to either the chapter or the archdiocese, I reply: No. For in the case proposed by the Reverend Father Jagatic, if any of the canons should become so unruly that they cannot live a common life with the others, then they must be excluded from the table and from the canonical house; unless they are so scandalous that canonical proceedings must be taken against them and ecclesiastical censures imposed. Furthermore, discord is less likely to arise among canons, since they are together only at meals; at other times, although they are in the same house, they are not together except in the choir. Hence, the difference from religious is denied, who in all things and in every respect depend on their superiors. Furthermore, if discord among canons is feared, it seems more to be feared among those who live separately, as, alas! experience everywhere on earth teaches, and this is more easily overcome among those who live together by the virtues that are necessarily demanded by a common life."

[*Latin ed. p. 275*]

VREHBOSEN. OR SARAJEVO. 275 "Concerning the damage to the archdiocese, which is feared, if the canons were to be obligated to lead a common life, it is undoubtedly fictitious, as if suitable individuals could not be found, if only those were chosen who were prepared to lead a common

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life. Firstly, hitherto, no one has conceived of our canons otherwise than as leading a common life. Therefore, the very fact itself proclaims a common life to anyone who desires to become a canon of Vrhbosna. Furthermore, with respect to our archdiocese, where, among the followers of so many different sects, an exemplary life is least found, that priest is the best and most worthy of preference over all others, who is prepared to lead a common life, if he becomes a canon, since, according to the teaching of the Saints, Christian virtues are to be valued more highly than miracles themselves. Therefore, it is easily understood that Christian virtue overcomes greater error, although it will not be easy to find a priest without due knowledge, since such a person could not even be ordained to the priesthood. However, the point is, we have already educated exemplary secular priests, who excel both in life and in doctrine, and we have the best seminary for both boys and clerics, and just as we received exemplary priests in the past year, so too we hope to receive them in the future."

"II. R. D. Dr. Ioannes Koscak, on whose occasion this entire question arose, uses the same arguments against the common life as does Rev. D. Jagatic; therefore, he is refuted by the same arguments. Firstly, it must be noted that this is not about a strictly common life, but about a common table and a common dwelling, while retaining the full right to a private salary of 2,000 florins, Austrian currency, which each canon receives from the government. The common table removes anyone from the service of a female servant, which could be dangerous to any life. If the matter is considered carefully, even among those canons who have unfortunately fallen, it is found that all began with the reception of some kind of housekeeper, except for other servants who are subordinate to them, almost like matrons. Alas, examples could easily be cited. Such a danger is what I intended to..."

[*Latin ed. p. 276*]

276 BOSNIA. OR SARAJEVO. to my canons. Which anyone can see with their own eyes has been the case for thirteen years. I refrain from enumerating the benefits that have arisen from the common life of the canons of Sarajevo, since one of them, the Reverend Father Jeglic, accurately notes them. "The fear that, with the passage of time, the canons of Vrhbosna might be compelled to embrace a religious life with a threefold vow, is entirely fictitious, although no one would make me happier than if there were a true hope of establishing regular canons. This fear, based on a delusion, is best demonstrated by this very question, and by the reason for which it arose. For if my canons, all of whom I have chosen and who are exemplary, and as such are known everywhere, would not leave any stone unturned to free themselves from any yoke imposed upon them for the greater glory of God and the salvation of souls, and indeed with their consent: what would those do, may God avert it, who have strayed from the path, if the Archbishop were to try to persuade them to embrace a religious life?"

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III. To all, including those presented by the two other canons, namely the Reverend Father Anthony Jeglic, the general vicar and archdiaconal chapter, and the Reverend Father Stephen Hadrovic, I subscribe and wholeheartedly embrace this proposal of the Reverend Father Jeglic: "Regarding my sincere wishes at this time: 1. that, with the permission and approval of the Holy Congregation, a clause be added to the statutes of this Chapter, whereby henceforth each canon is to be bound to the common life, that is, to common residence in the same house, to common service, and to a common table; 2. that the canons who are now observing the common life be encouraged by this Holy Congregation never to depart from this freely accepted life; 3. that, above all, the canon who, in recent days, has already departed, be gently but firmly admonished by this Holy Congregation to return to the common life."

With these considerations, the question was raised as to what should be answered in prayer.

RESOLUTION. The Holy Congregation, after deliberation on June 22, 1895, decided to respond: "Considering the particular circumstances... "

[*Latin ed. p. 277*]

BOSNIA. OR SARAJEVO. 277 souls, to whom it is recommended to pray to the Most Holy [Mary], as the canons of today strongly urge, to maintain common housing and sustenance; and the successors are entirely obligated.

GENOA. JULY 20, 1895. Session 24, Chapter 18, Concerning Reform.

SUMMARY OF FACTS. In the diocese of Genoa, not far from the city of Genoa, a lofty mountain rises, commonly called Ficogna, on whose precipitous summit a celebrated temple is erected, dedicated to the Queen of Heaven under the title of the Blessed Virgin Mary of Guardiagrele, since the year 1490, when, as it is said, the Blessed Virgin appeared to a certain pious farmer, Benedict Pareto, requesting that a small chapel be built in her honor there. Benedict, eager to fulfill the wishes of the Blessed Virgin, and using his own funds, as well as contributions from the faithful, erected a chapel for the heavenly Patroness, and dedicated it. Subsequently, the Pareto family seems to have exercised the right of patronage in the chapel, employing certain members of the local parish of Livellato, now called Massari, and the parish priest of the same parish performed certain functions there. However, when disagreements arose between the Massari of the Blessed Virgin's chapel and the parish priest of Livellato, arbitrators were chosen to resolve them, and in an agreement of the year 1596, among other things, they decided that a chaplain should be chosen, with the obligation of celebrating Mass in the parish church on Sundays during the octave of Pentecost and on the feast of Saint Michael, in place of the parish priest, who celebrated Mass in the aforementioned chapel on those days; and the chaplain was assigned a portion of the offerings made by the faithful to

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the Blessed Virgin's chapel, by the parish priest and the Massari. In the year 1626, it is said that the Pareto family became extinct, whose name is still found in the aforementioned document.

[*Latin ed. p. 278*]

278 In GENOA, a person from among the Massari; therefore, their rights appear to have been consolidated thereafter with the remaining Massari and their successors. In the same year, 1626, another agreement is reported between the Massari and the parish priest of the town of Livellato, initiated to better define the rights established by the agreement of 1596 and to resolve other disputes that had arisen. These agreements were established through these compromises, and the Archdiocesan Curia of Genoa repeatedly approved and confirmed them in subsequent years, as evidenced by the decrees presented in the records by the Parish Procurator of the town of Livellato, until the year 1696, when another agreement was initiated, in which the agreements of the years 1596 and 1626 were strengthened and confirmed. Due to the increasingly growing reputation of the sanctuary and its increased assets, the Most Serene Republic of Genoa, especially from the year 1700 onwards, and also due to the changing circumstances of the times, had claimed the aforementioned church and its buildings for its protection and jurisdiction, through various approved agreements, for the good management of the sanctuary and to achieve harmony. As the aforementioned decree states, the Church of the Blessed Virgin Mary of Guardia had long chosen a protector among the most noble Patricians of Genoa, among whom, some have been particularly beneficent, such as Abbot Jerome, from the noble Durazzo family of Genoa, who, between the years 1780 and 1785, built a large and comfortable hospice near the sanctuary for the reception of pilgrims. Meanwhile, due to this annexed hospice, and also due to other buildings constructed, and the expanded form of the church, doubts and controversies arose, leading to disputes, namely, a dispute over boundaries, even parochial boundaries, as the parish priest of Saint Mary, commonly called *dei Ceranesi*, claimed that a part of the sanctuary and the buildings within it were located within his parish territory. As time passed, the disputes between the parish priest of the town of Livellato and the Massari of the aforementioned sanctuary did not cease, and in the year 1787, an agreement was initiated, with certain conditions.

[*Latin ed. p. 279*]

279. Regarding the past matters, the agreement of March 21, 1696, which had remained unobserved, was revived; so that, on the one hand, the Massarii [plural of Massarius, meaning "chanting priests" or "clergy who sing the Mass"] of the parish of Livellato were to repay annually 168 livres; and, on the other hand, the parish priest was never again to interfere, directly or indirectly, in the administration of the Sanctuary. But this latter agreement

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proved no more successful; for, over time, other questions arose between the parish priest and the administrators of the Sanctuary, not only concerning the functions to be performed in the Sanctuary, and concerning the duties pertaining to the priests attached to the same Sanctuary, but also concerning the direction of the very Hospice. To resolve these matters, the Archbishop Cardinal Tadini issued a new decree during the sacred Visitation of 1840, stipulating: that the parish priest of Livellato, saving his territorial jurisdiction, and except for the functions performed on the occasion of the parish processions, should not in any way perform any other functions in the church of the Sanctuary; these functions having been reserved to the custodians of the Sanctuary, and to the chaplains chosen by the Ordinary through the presentation of the administrators. Furthermore, the administrators of Livellato were to be obligated, as a form of mutual respect, to pay new annual fees of 120 livres to the parish priest. Meanwhile, in 1844, the civil authority, without opposition from ecclesiastical authority, established other statutes for the administration of the aforementioned Sanctuary. Then, in 1872, because the Massarii were delinquent in paying the fees to the parish priest of the town of Livellato, and for some years had not paid anything at all, the same parish priest brought the Massarii before the civil court. However, the civil court, considering that the parish priest himself had not adequately enforced the obligations he had assumed, rejected the parish priest's petition at the very beginning of the proceedings, and condemned him to pay all expenses. Nevertheless, despite this judgment, in the following year, 1873, a settlement was reached between the parties in dispute, in order to resolve the litigation, whereby it was agreed that the current parish priest of Livellato...

[*Latin ed. p. 280*]

280. IANUEN. In order that access to the sanctuary might be granted for the performance of functions pertaining to it, according to ancient customs, it was determined that the Mass priests should deliver the sum of one thousand florins for the debts owed to the aforementioned parish priest, debts which had not been paid up to the year 1872; and subsequently, they should pay annual installments of 108 florins to him and his successors. However, since these arrangements did not remove the animosity of the faithful, and indeed, the Blessed Virgin seemed to be more and more present in her shrine, and her blessings were widely distributed to the people, in the year 1890, her temple was restored to a more beautiful and majestic form, and solemnly returned to public worship. At that time, the Archbishop, in order to better regulate the discipline of the clergy and administrators of the aforementioned church, decreed on May 20, 1890: 1. The aforementioned sanctuary, from its inception, shall henceforth be directly subject to our jurisdiction. 2. A priest will be chosen and appointed by us for the first time as Rector of the same sanctuary, who shall perform the duties which are

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performed by all Rectors of sacred buildings, and whenever the aforementioned office becomes vacant, the election shall be made by us. 3. The Rector shall not only oversee the temple, but also all the sacred furnishings, and shall direct the functions which are customarily performed there daily, and, in agreement with us, shall choose the readers and those who perform the sacred duties in all the solemnities of the sanctuary. 4. He shall also direct the priests who serve at the altar, and the confessors and acolytes attached to the sanctuary. 5. It shall be permissible for any parish priest to enter the sanctuary with his people, not only in a surplice, but also with a cross, and to perform the sacred rites there, provided that the Rector and the parish priest have previously agreed, so that everything may proceed in an orderly manner, and so that the sacred rites which are to be performed in the sanctuary are not disturbed. 6. With regard to the revenues, offerings, and stipends of the sanctuary, a regular administration has been established, to which all matters shall be referred. We command that all of these things be faithfully carried out, always preserving the rights of the two parishes which exist in the territory, to which the new sanctuary is added.

[*Latin ed. p. 281*]

JANUARY 281. Immediately against this decree, the parish priest of the town of Livellato protested, so that he subsequently decided to formally initiate a lawsuit before the Sacred Congregation. The Archbishop, consulted according to custom for information and his opinion, responded on April 5, 1894, among other things, requesting that, in order to avoid conflicts, the parish priest of Livellato be denied the right to perform the customary functions within the Church of the Sanctuary. Later, before the dispute was resolved, the same Ordinary considered it necessary to appeal to the Sacred Congregation, requesting that it deign to decide on the incorporation of the Sanctuary of the B.V.M. of Guardia into the parish. This proposal of incorporation into the parish was contrary to the opinion of the parish priest of Livellato, and in formulating the questions to be debated, his advocate explicitly brought this disagreement to the attention of the court.

A SYNOPTIC ACCOUNT OF THE DEFENSE OF THE PARISH PRIEST.

Regarding the first question raised by the patrons of the town of Livellato, they ask whether the temple of the B.V.M. of Guardia, with all its parts and annexed buildings, is located within the boundaries of the parish of St. Bartholomew in the town of Livellato; or whether some part of it, or some of the annexed buildings, belongs to the territory of the neighboring parish of St. Mary in the town of Ceranesi. Then, they note that in all the documents presented, mention is always made of the parish priest of St. Bartholomew; but no mention of the parish priest of St. Mary is ever found therein. However, the patrons of the parish of St. Mary in the town of

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Ceranesi, for the first time, began to claim that a part of the area in which the temple of the B.V.M. of Guardia and its annexed buildings are located belongs to them, since in the year 1792, a hospice was built, adjacent to the temple. Therefore, the patrons argue, it was entirely unjust for the deceased Archbishop Salvator Magnasco to have concluded his decree of May 20, 1890, with these words: "We command that all these things be faithfully carried out," always safeguarding "the rights of the two parishes that exist in the territory where the new Sanctuary is erected."

[*Latin ed. p. 282*]

282 GENOA. "Regarding the union." On the contrary, they state that the present Archbishop of Genoa, having been explicitly questioned by this Holy Congregation on this matter, has declared that jurisdiction over the houses located on the summit of Mount Ficogna should be granted to the parish priest of Livellati, because no opposition is feared either from the parish priest or from the parishioners of Ceranesi. Turning to the second question, namely the transaction, which began on April 8, 1873, the petitioners first recall that, in previous times, the power of the Rector of Livellati over the church of the Blessed Virgin Mary at Guardia was very extensive: to the extent that the Archiepiscopal court of Genoa, in the year 1636, forbade the sacristans of that church from retaining the keys, and ordered that they be handed over to the Rector of Saint Bartholomew for safekeeping. This was done because the church of the Blessed Virgin Mary at Guardia was annexed to the church of Saint Bartholomew, and both churches had the same Rector. Regarding the administration of the goods of the church of the Blessed Virgin Mary at Guardia, the petitioners inquire, it has from the beginning been with the founder of the church and the Rector of Livellati; then with the Rector of Livellati and the sacristans, to whose custody the movable goods were entrusted when inventories were made. And if at any time another Rector were appointed in the parish of Saint Bartholomew, then an inventory of the goods of the church of the Blessed Virgin Mary at Guardia was made, and these were handed over by the retiring Rector to the new Rector for safekeeping. The money and other movable goods, which were the property of the church of the Blessed Virgin Mary at Guardia, were kept in chests, locked with two or three keys. Indeed, one of these keys was kept by the Rector of Livellati. This is how it was ordered by the apostolic visitor in the year 1582; this is how the arbitrators ordered in the year 1596; likewise, it was prescribed by the court of Genoa in an edict of August 11, 1636; and this is how it was ordered in the year 1699 by the Senate of Genoa. Indeed, the arbitrators of the year 1596 had ordered that the larger chest, in which were kept the money and the most important movable goods of that church, be deposited with the

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Rector of Livellati in the church of Saint Bartholomew.

[*Latin ed. p. 283*]

GENOA, 283. Furthermore, it must be noted, as the patrons point out, that the Canon Salinero testifies that no expense could be incurred by the priests of the Blessed Virgin Mary of Guardiagrele without the permission of the Rector of Saint Bartholomew, to whom these priests were obligated to render an account of the money spent. Moreover, from an inscription on a stone that once stood in front of the church of the Blessed Virgin Mary of Guardiagrele, it is clear that the Rector of Livellati, along with the priests, was responsible for restoring the church itself in the years 1634 and 1635. And shortly thereafter, an edict was issued by the archiepiscopal court of Genoa, which forbade any construction to be carried out in that church without the consent of the aforementioned Rector; and if the priests were unwilling, the Rector had the power to appoint two other officials, or priests, to take their place for the remainder of the time. Hence, when in the year 1643 the tower of the church of the Blessed Virgin Mary of Guardiagrele was struck by lightning and suffered great damage, the Rector of Saint Bartholomew obtained a decree from the Genoa court, by which he was authorized to collect a stipend for the purpose of restoring the tower; and in that decree, no mention is made of the priests of the Blessed Virgin Mary of Guardiagrele. As the worshippers observe, only one Mass was celebrated on feast days in the church of the Blessed Virgin Mary of Guardiagrele, which was inconvenient for the people who frequented the church (since not all were accustomed to gathering at the same hour); therefore, the Rector of Livellati petitioned the Archbishop to grant permission to celebrate two Masses on each feast day. And the Archbishop, granting the requested permission, wrote a letter: "To the Most Reverend Lord, as to a brother, to the Reverend Father Francis Mary Bacigalupi, Rector of Livellati." Furthermore, the patrons state that, from the very beginning of the church of the Blessed Virgin Mary of Guardiagrele, the Rector of Saint Bartholomew was entitled to a portion of the offerings made in that church by the faithful. Hence, it is decreed in the agreement of the year 1626: that whatever remained from said offerings (after deducting the chaplain's salary) should be divided into four equal parts, of which one part would be given to the Rector of that church for the time being.

[*Latin ed. p. 284*]

284 GENOA. In the eighteenth century, it was observed that civil authorities began to interfere in the affairs of the Sanctuary, claiming that the assets of that temple belonged to the laity; as if it were not absurd to call something belonging to the laity, property that was meant to serve the preservation of a temple. However, in those times, which immediately preceded a great upheaval of all things, many incursions were made by

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secular authorities into the affairs and rights of the Church throughout almost all of Europe. The magistrates of the Republic of Genoa provided an opportunity to interfere in the affairs of the temple of the Blessed Virgin Mary of Guardia, causing perpetual disputes between the clergy and the Rector of St. Bartholomew. In these circumstances, according to the accounts, it seemed opportune to the Rector Livellati to yield to the necessities of the time, and to relinquish a considerable portion of his rights. Therefore, on October 21, 1787, he entered into an agreement with the clergy of the temple of the Blessed Virgin Mary of Guardia, in which the clergy acknowledged the Rector's right to the canon of the books of Genoa, one hundred and eight in number, promising to pay it to him annually. The Rector, in turn, promised: to have no further share in the administration of the assets of the temple of the Blessed Virgin Mary of Guardia, or in any other office, which he had exercised for three centuries. Indeed, moved by a love of peace and harmony, he gradually relinquished almost all of his other rights, reserving for himself only the performance of sacred duties in that temple, namely, to perform the sacred functions there once a year on the feast of the Blessed Virgin Mary of Guardia, and, if the Archbishop should ever visit there, to offer him the lustral water at the door of the temple. However, these concessions were not sufficient for the clergy, who, according to the narrators, did not cease to strive to deprive Rector Livellati, even of those rights that he had reserved solely for himself. The Rector, on the contrary, as was fitting, defended his rights with all his might, and repelled their attempts. To bring an end to these disputes, the Archbishop Tadini of Genoa issued a decree on September 26, 1840, by which he ordered Rector Livellati to, in the future, refrain from performing functions...

[*Latin ed. p. 285*]

JANUARY 285: In the church of the Blessed Virgin Mary at Guardiagrele, certain individuals were abstaining from attending Mass; furthermore, it was decreed that the parish priests should increase the annual canon payable to them by one hundred and twenty *libellae*. However, as the Archbishop stated in an information document dated December 20, 1893, it did not happen that this decree was ever put into effect. In the year 1866, this matter was brought up between the Rector of Livellati and the parish priests of the church of the Blessed Virgin Mary at Guardiagrele. The Reverend Joseph Garibaldi, who was at that time the Rector of Livellati, did not deny that the parish priests were accustomed to receiving certain payments. However, knowing that the inhabitants of the locality would most likely object to the Rector asserting his right to perform the sacred functions in the church of the Blessed Virgin Mary at Guardiagrele on the feast day of that church, the parish priests agreed among themselves to submit a draft agreement to the approval of the Curia and of the parochial church fabric. However, they were unable to obtain this. Because the officials of

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the town of Ceranesi and the administrators of the property of the church of Saint Bartholomew were unwilling to approve the proposed agreement, the matter remained unresolved. Therefore, according to those inquiring, the Prefect Garibaldi performed the sacred rites in the church of the Blessed Virgin Mary at Guardiagrele on the feast day of the Blessed Virgin Mary. But, on the contrary, the parish priests refused to pay him the annual canon. As a result, the Prefect summoned them to court. However, according to the lawyers, the lawsuit was not brought to its final conclusion, because, while it was pending, on April 8, 1873, a settlement was reached, in which, among other agreements, it was solemnly stipulated that, beginning in the year 1873 and thereafter, the sum of 108 *libellae* would be paid annually to the parish priest for the time being and to his successors by the parish priests, granting to the said parish priest and his successors the faculty of performing the sacred functions, according to ancient customs, in the sanctuary. This agreement, the plaintiffs state, remained in force until the year 1890: the parish priests paid the annual canon to the Prefect of Saint Bartholomew; and the Prefect attended the church of the Blessed Virgin Mary each year on the feast day of the Blessed Virgin Mary, in order to perform the sacred rites. But on May 20, 1890, almost...

[*Latin ed. p. 286*]

286. HAVING restored the church, the Archbishop Magnasco suddenly issued a decree by which, having placed that church directly under his jurisdiction, he simultaneously stripped the Prefect of Livellati of all rights, not granting him any compensation for the damage, and forbade him from performing the sacred rites in the church of the Blessed Virgin Mary of Guardiagrele, except for those rights which other parish priests also enjoy in that church. Such a decree, the petitioners assert, certainly deserves no consideration. For in order that a judgment may be valid, a trial must precede it, namely, a legitimate examination of the controversy between the plaintiff and the defendant, and its discussion and definition by a judge. But that decree is vitiated by nullity, the petitioners argue, even if it is said that the Archbishop issued it not as a judge, but as a legislator. For although it can easily be conceded that a Bishop, within the limits of his diocese, may enact laws suitable for the administration thereof, he cannot nevertheless infringe upon acquired rights by means of those laws, unless at least there is a just and reasonable cause for doing so. Indeed, this cause is lacking in this case, according to the petitioners. For the only reason given in the decree itself is: "Since a new sanctuary has been erected in the valley of Porciferae under the title commonly known as 'della Guardia' in the diocese of Ienven, and has been brought to a successful conclusion through the offerings of the faithful, with greater amplitude and elegance." And it cannot be said, the lawyers argue, that that decree was necessary because of changed conditions in the church of the Blessed Virgin Mary of Guardiagrele. For no

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change has been made from the year 1873 to this time, by which it would necessarily be required that the Prefect of St. Bartholomew be completely excluded from performing the sacred functions in that church, even once a year. If it is objected that new constitutions have been established, which were confirmed by a royal decree of April 6, 1890, according to which the election of the Chaplain or Rector of the Sanctuary, as well as the hospice, depend on the Ordinary of the diocese in ecclesiastical matters, a simple answer is readily available: namely, that in the year 1873, when the agreement was made, the constitutions of Charles A l -

[*Latin ed. p. 287*]

JAN. 287. In the year 1844, certain decrees were approved, in which it is also stated that the election of the Chaplain, the custodian of the sanctuary, pertains to the Ordinary. It is of no consequence that in the new constitutions there is article 21, which was not present in the older constitutions, prescribing that whatever pertains to the service of worship must remain under the supervision of the Chaplain-custodian, with the exception of the dispositions of the parish priests; for the patrons maintain that, besides the fact that the Prefect could not, through the new constitutions, have his rights infringed, which were based on such solid foundations and had been solemnly confirmed not many years prior, that article is not opposed to the Prefect's authority. For through it, the Chaplain, or Rector of the church of the Blessed Virgin Mary of Guardiagrele, is placed under the authority of the parish priests, even in matters pertaining to worship. Therefore, it is permissible for the parish priests to order that, at least once a year, the sacred functions be performed in the church of the Blessed Virgin Mary of Guardiagrele by the Prefect of Saint Bartholomew of Livellati. And if it is permitted to them, they are also obligated to do so; for they promised to do so in the agreement of the year 1873. With these things established, the patrons conclude that nothing in the new constitutions can be found that excludes the Prefect's rights. Furthermore, the patrons point out that the inhabitants of the vicinity of Monticogna vehemently detested the Archbishop's decree, so that scarcely had the Archbishop's decree of May 20, 1890, been made known in the parish of Livellati, when great agitation arose among the people, so that it was greatly to be feared that the excited citizens would resort to riots and violence, and only the Prefect's prudence is to be credited, if nothing was done by them rashly, seditiously, or turbulently. Indeed, on that Sunday, he addressed his frequent parishioners in the church, urging them to abstain from disturbances: for the dispute must be resolved not by force, but by the solemnity of the law, by a higher authority; and he promised to undertake the matter himself, and to ensure that the rights of the parish and the parish priest would be protected. Finally,

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proceeding to the matter concerning...

[*Latin ed. p. 288*]

288 IANUEN. They report that the Archbishop, having been informed of the proposed erection of a church dedicated to the Blessed Virgin Mary at Guardiagrele, wrote to both parties, stating that he was greatly surprised, and that he was requesting that the erection be postponed in order to resolve the dispute, which was already known to be fraught with danger. For they say that, especially concerning the second question, which pertains to the right of the Rector of Livellato to perform sacred functions in the church of the Blessed Virgin Mary at Guardiagrele, according to ancient customs, it cannot be resolved, even if the church is erected into a parish. For the Rector does not possess that right because the church is within the boundaries of the parish of Saint Bartholomew; but because, whatever may be the case regarding older titles, such a right was solemnly granted to him in a transaction of the year 1873. And it was not stipulated in the transaction that this right should be maintained only as long as the church of the Blessed Virgin Mary remained within the boundaries of the parish of Saint Bartholomew. Therefore, even if the church is erected into a parish, the Rector's right, although exercised in a different parish, undoubtedly still subsists. Indeed, another title might even be added to this right. For, as canon law writers state, among the rights that are customarily reserved in the dismemberment of a parish church to the mother church, are certain annual obligations. Thus, Ferraris writes: "In the dismemberment of a parish church, it is customary to reserve a canon, or some other annual payment, to be made to the mother church, for example, 'that a certain sum be paid annually, to be assessed at the discretion of the Bishop,' or 'that a solemn Mass be celebrated in the newly erected church by the Rector of the mother church on the day of the saint's feast,' or etc." (Bibliotheca canonica, v. Dismembratio, no. 21). And they point out that what the Archbishop states, in order to demonstrate that the erection of the parish is necessary due to the number of inhabitants, is not in accordance with the truth. For the inhabitants of the vicinity of Mount Ficogna, and the administrators of the property of the parish church of the town of Livellato, state that the erection of such a parish is not necessary, because there is a lack of people who would stably surround the sanctuary; and the faithful who come to the sanctuary for devotional purposes remain there for only a few hours. And the architect Charles Danè, to whom the magistrates are giving their support,

[*Latin ed. p. 289*]

JANUARY 289. The records of the three neighboring municipalities of Ceranesi, S. Quirici, and Campomorone, as well as those of the five chapels of the Blessed Virgin Mary of Guardiagrele, indicate that, besides

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the priests devoted to the Sanctuary, and two innkeepers, only two other individuals reside there: a woman and a caretaker who live in the hospice. Therefore, after examining the parish registers, it was discovered that, from the year 1706 to the year 1893, only thirty-five people have died on the summit of Mount Ficogna. Consequently, according to the promoters, the chapel should be used only by the caretaker, the woman, and the two innkeepers; the parish should be established on the summit of Mount Ficogna. Regarding the houses that could be incorporated into the new parish, the promoters note that there are a total of seven inhabited houses that are not far from the summit of Mount Ficogna: three, called Fossa, Acquafredda, and Panzetta, belong to the parish of the town of Ceranesi; the other houses, which are called Liamato, Lagoscuro, Scarpin, and Colletta, belong to the parish of the town of Livellato. However, the inhabitants of these houses refuse to be incorporated into the parish of the Blessed Virgin Mary of Guardiagrele, because access to the Sanctuary is difficult; indeed, especially during the winter, due to the harsh weather, it becomes impossible. Finally, the promoters note that the establishment of this parish of the Blessed Virgin Mary of Guardiagrele, if it were to occur, would be detrimental to the Blessed Virgin Mary herself and would prove to be very expensive, because the faithful of the other parishes, out of a certain rivalry, would visit the Sanctuary even more frequently, as is currently the case, and would not bring offerings. This is affirmed by the administrators of the property of the parish of Livellato. The same is confirmed by the officials of the town of Ceranesi, within whose boundaries the aforementioned chapel is located.

DEFENSE OF THE CHAPEL. On the contrary, the advocate who defends the rights of the Venerable Sanctuary, first of all argues that no right belongs to the parish priest of Livellato in the aforementioned church. For he points out that the aforementioned chapel, whether by reason of its lay founder, or by reason of the lay property on which it was built, or by reason of the lay people who managed it, or because it was never given to the Church or to the Bishop, has the nature of a lay endowment.

[*Latin ed. p. 290*]

290 He accepted, and always retained, the title of "Rector"; under this title he is designated in documents, and it is thereby confirmed. The Rector of Livellati, according to the patron, was treated as a simple chaplain, either without jurisdiction, or only ministerially, by the laity, for the performance of sacred rites in that chapel; hence, a portion of the alms, not by parish law, but as manual labor for his trouble, was given to him. "Since it is established by law," the advocate continues, "that the right of patronage is a lay right, established from secular goods, and exercised by a layperson," it also follows from law: "No parish church has any jurisdiction over other churches within the boundaries of the parish, and a chapel subject to the right of pa-

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tronage of laypersons has no dependence on the parish priest with regard to matters that are not parochial, unless the parish priest is supported by a special privilege." – De Luca, Disputation 31 on Parish Priests, No. 8. – Rota, Decree 990, Nos. 1 and 2, correspondence from Malines. – Decree of the Sacred Congregation of Rites, dated December 10, 1703. Furthermore, Benedict XIV, in *Institutiones*, 109, § 6, No. 110, states: "To the extent that the rights of the parish priest are extended to other functions, which are not parochial but purely sacerdotal, the parish priest certainly has no right to prohibit the Rector of another church from performing them." Therefore, the patron argues, if the parish priest of Livellati ever performed functions in that chapel, it was done at the free will of the patron, and the parish priest did not do so by a right that belonged to him, nor by reason of his parochial office, but rather was asked to do so. Therefore, all acts performed by the parish priest are entirely invalid for establishing a prescription, either because of the lack of peaceful possession, "or because the acts are not necessary, but merely facultative, and do not establish a prescription." – De Luca, *De Beneficiis*, p. 1, Disputation 89, No. 13. – Rota, Decree 990, No. 8, correspondence from Malines. Here, the patron cites a case decided by the Sacred Congregation, under the title: *Balneoregien. Oratorii quoad SS. Functionum*. "In the middle of an estate, commonly called d'Agliano, there exists a public chapel dedicated to the Blessed Virgin of Grace, with a single altar..."

[*Latin ed. p. 291*]

GENOA, 29th day. [This refers to a dispute concerning a building that served the interests of a large estate.] The monks of Ascoeterii del Buon Gesù, formerly belonging to the aforementioned estate, had restored the aforementioned oratory from its foundations, and for the spiritual benefit of the people, they were accustomed to celebrating Mass on feast days, by order, in that very chapel. In the year 1809, when the assets of pious institutions were being made public by the Demanial Treasurers, the estate itself passed into the ownership of Cardinal De Simoni, and from his heir, in the year 1859, it was transferred to Sir Peter Valentini through a contract of purchase and sale, in which all rights pertaining to the property were transferred to the seller. "When the most pious Sir Valentini wished to have Mass celebrated on his feast days at his own expense, the parish priest of the territory insisted on his right to celebrate Mass on the principal feast day, which is celebrated in the aforementioned oratory on the second day of Pentecost, claiming to have possessed this right since the year 1800, that is, for 64 years. This matter was brought before the Sacred Congregation of the Council on May 28, 1864, with the following questions: Whether it is permissible for the Sir to have solemn Masses and other non-parochial functions celebrated, especially on the second day of Pentecost, in a public oratory through a chaplain and other priests, independently of the parish

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priest, in this case. And, if so, how may the same Sir retain the keys of the oratory in this case? The Fathers gave the following response: To 1. Affirmative, according to the form of the Decree of the Sacred Congregation of Rites of the City and the World, dated December 10, 1703. To 2. Affirmative." Then, the author recounts that the Most Serene Republic took the sanctuary under its immediate protection, appointing a Prefect to manage the affairs of the sanctuary in its place. The coat of arms of the Most Serene Republic was placed in the same sanctuary, and statutes were enacted, in which a priest was assigned to exclusively perform the sacred ministry, the number of Massariorum [altar servers] was increased. In the year 1844, he continues, King Charles Albert, after the decision of the Senate of Genoa concerning the administration of the sanctuary, at the request of the Most Reverend Archbishop Tadini, placed the sanctuary under his patronage; and furthermore, by decree of April 20th, he established a Massariam of eight members, of whom...

[*Latin ed. p. 292*]

292 GENOA. There were two from Genoa, two from Livellati, and four from other parishes in the valley, to which the Syndic of Ceranesi and the Royal Procurator residing in Genoa added. Therefore, the sanctuary, as the speaker notes, which from the beginning had only a local character, over time passed into national dominion. For this reason, the Royal authority, as well as after the judgment of the Senate, and at the urging of the Most Serene Republic's Government, but also at the urging of the Archbishop, placed the sanctuary again under its Royal patronage. It is well known to priests and tonsors that those pious works which are subject to Royal patronage are exempt from ordinary ecclesiastical jurisdiction (Council of Trent, Session XII, Chapter V, on Reform). Finally, he insists, in the year 1890, on April 6th, King Umberto I confirmed a new statute, which is still in force, by virtue of which Massaria, which is under the authority of the Royal Procurator of the second grade court of Genoa, must consist of 14 members; namely, the rector of the sanctuary for the time being and the Syndic of Ceranesi. To these two, twelve others must be added, two chosen from the parish of Livellati, four from neighboring parishes; and six from Genoa and the city of Sampierdarena. Then, the speaker notes that the Shrine of the Blessed Virgin has grown greatly day by day, until the present magnificent building was constructed; he notes that the origin of the controversy was that the founder, Pareto, and later the inhabitants and parishioners of Livellati, whether out of necessity or reverence, called their own parish priest to celebrate the sacred rites in the chapel of Guardia, and gave him a portion of the alms for his trouble. Gradually, and little by little, according to the patron, these parish priests began to claim for themselves the rights of the patrons, and they left nothing undone to intrude upon, not only the jurisdiction or functions, but also the management and ad-

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ministration of the affairs of the same sanctuary, by cunning and force, so that they seized the greater part of the alms offered by the faithful to the sanctuary, and appropriated the furnishings, enriching their own relatives. The patron contends that this can be proven.

[*Latin ed. p. 293*]

On January 29th, [the document] refers to the opinions of two advisors of the Most Serene Republic, who, with eloquent prose, denounce the abuses committed by the parish priests of the town of Livellato. From this, the advocate concludes that it is clearly evident: 1. That almost all of the parish priests of Livellato were appropriating the alms intended for the Sanctuary. 2. That they were improperly interfering in the election of the *Massarii* (officials responsible for the Sanctuary), even to the point of inciting disturbances among the people, and this for their own political purposes, or in order to have *Massarii* elected who were favorable to them. 3. That these abuses began particularly from the year 1626, that is, 136 years after the founding of the Sanctuary, and in the same year in which the last of the descendants of Pareto donated the patronage rights to the Sodalitas of Livellato. 4. That in the year 1596, some agreement had already been initiated; but whether due to the involvement of suspicious individuals, or due to the cunning methods by which it originated, it certainly suffered from a flaw of nullity, so that after 29 years, or in the year 1626, another agreement or transaction was established. Since the subsequent agreements mentioned above, dating back to the year 1596, are flawed, the Supreme Tribunal of the Republic rightly abrogated them entirely. Furthermore, the advocate continues, the acts and concessions, favored by the parish priests of Livellato and detrimental to the Sanctuary and its patrons, which were approved by the Episcopal Curia, were of no validity: 1. Because the Bishops can do nothing contrary to the general laws; and by common law of the Church, Sodalitas and patrons are exempt from the jurisdiction of the parish priests, at least with regard to non-parochial functions, and with regard to the administration of their assets; therefore, whatever the Bishops decreed in a case contrary to the rights of the patrons and the Sanctuary, was invalid and of no effect. 2. Because the parish priests, through circumvention, abuse, and deceit, approached the Curia, and obtained decrees, acts, and powers from it. Therefore, according to the advocate, the Senate, or the Supreme Governor of the Most Serene Republic, placed the Sanctuary under its immediate protection: first, to put an end to the disturbances and improper abuses of the parish priests of Livellato; and second, to ensure that the patronage rights, after the construction of a new temple,

[*Latin ed. p. 294*]

294. The gate had been, so that he might take it for himself. In the year

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1700, a statute was enacted, for the proper governance of the sanctuary; and it was stipulated that: the University or Confraternity should choose a chaplain to serve, who would exclusively perform all things pertaining to the divine worship within the sanctuary; that there should be three keys to the alms box, one of which the chaplain would retain, while the other two would remain with the two Massarios; etc. In the very beginning of this statute, it was expressly stated: "that in the future, [they] should strive to confer the greatest glory upon this most holy chapel; and to the perpetual peace of the Massarios and their company."

Furthermore, since the parish priest of the town of Livellato did not cease from disputes and contentions, on May 11, 1784, the Supreme Tribunal, after the prosecutor had presented his case, pronounced a sentence, which was confirmed by the Most Serene Senate, in which, after a preliminary declaration, it was decided that the compromise between the parish priest of Livellato and the Massarios of the Oratory of the Blessed Virgin Mary of Guardia, which had been initiated, should not be taken into consideration; and that the Massariam of the same Oratory should hold possession of the disputed house.

Moreover, it was noted that the exception of the compromise made by the new Massarios would not be of any benefit, because, without the consent of the Most Serene Senate, the Oratory did not possess the faculty of obligating the property.

Furthermore, concerning the claim that the aforementioned parish priest asserted to have, the Supreme Tribunal held that, since it had been forbidden to the parish priest by the edicts of 1764 and 1782, he must also observe the chapters issued in the year 1700 and confirmed by the Most Serene Senate, derogating from any other decree to that effect, especially the convention of the year 1696.

However, it was also noted by the defender that the aforementioned sentence, since it was approved by a secular authority, would have no validity in relation to ecclesiastical matters. Indeed, since the sanctuary had been, from its origin, under the jurisdiction of a secular authority, and was immediately subject to the protection of the Supreme Prince, it was indeed within the power of that same Prince to protect the rights of the sanctuary. Therefore, it was concluded that, although the parish priest may have induced the Massarios to enter into another transaction on October 21, 1787,

[*Latin ed. p. 295*]

JANUEN. 295, however, this is equally of no value. When the parish priest, in the same assembly, promised that he would have no further part in the administration, it is surprising that the same parish priest wished to recognize the agreement, only in that part which was favorable to him. The parish priest indeed explained his intention before the Civil Tribunal in the

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year 1872, but the advocate observes that this same intention was rejected by a contrary decree. However, this did not prevent the parish priests of the town of Livellato from acting presumptuously. Regarding the transaction begun in the following year, namely 1873, the advocate points out that this was not a transaction, but a mere dispossession and theft. Indeed, a transaction is defined as: "an agreement or convention concerning a doubtful matter or an uncertain dispute, with something given and something retained." In the present case, however, there was no question of a doubtful matter or an uncertain dispute, since ten months previously the question had already been decided in favor of the Sanctuary, and the matter had passed into judgment. Furthermore, the parish priest gave nothing, but rather received more than he had requested in the previous judgment: in which, regarding the functions of administering the Sanctuary, not a single word had been carried out. Therefore, even according to modern law, such a concession is to be considered null and void: for in article 1768 of the Civil Code it is stated: "The transaction does not extend beyond that which forms its object." But in this case, the object of the transaction could not be anything other than the demands of the parish priest expressed in the previous judgment; therefore, the concession made in the transaction must be considered as not added. Furthermore, this kind of transaction, the advocate continues, is also vitiated by nullity for other reasons: 1. because it was based on an agreement of the year 1696, which had been repealed by a decree of the Most Serene Senate in the year 1874; therefore, since the foundation is crumbling, the entire structure of the transaction must collapse. 2. because against the parish priest, the prescription of thirty, and even one hundred, years irrevocably stood, as declared by the Tribunal in the judgment of the previous year. 3. because the administrators of pious works and of churches cannot alienate anything, either in terms of goods or of...

[*Latin ed. p. 296*]

296. Regarding the matter, without express permission, whether from civil authority or ecclesiastical authority, a power which was entirely lacking in this case; while everyone knows that any transaction has the appearance of alienation. 4. Because it was absolutely forbidden for the parish priest to interfere in the affairs of the Sanctuary, even regarding its functions, by the Statutes of the year 1700, by the Edicts of the years 1764 and 1783, by the judgment or decree of the Most Reverend Senate of the year 1784, and by the decree of the Archbishop of the year 1840; and most recently by the new Statute of the year 1890 and the Archdiocesan Decree of the same year. Therefore, it is manifestly evident that, viewed from any aspect, the transaction itself has no validity or value, the patron argues. All these usurpations, the patron says, are easily understood if one considers the arrogance of the modern parish priests who trample upon the footsteps

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of their predecessors. For, when Archbishop Magnasco on May 20, 1890, decreed that the new Sanctuary was placed directly under his jurisdiction, the parish priest, on the 25th of the same month, wrote to the same Archbishop: "Your Eminence, I, the undersigned, protest and strongly protest against your Decree... I will defend my rights before the tribunals, and I will only yield after many judgments." - "Most Reverend Monsignor. - For a long time, I have heard that some desire to make the Sanctuary independent from the parish of Livellato. I have always believed this, because of the envy of the devil, etc. Now I am told that the Most Reverend Curia consents to the desires of the aforementioned. I will not yield any rights; but I will take up the defense in every way; and I will only yield after many judgments." And this parish priest did not cease to attack, the speaker continues, fiercely and gratuitously, both the Massariorum and many priests, especially the Reverend Father Francis Montebruno, the founder of the pious work "Istituto degli Artigianelli"; a man of charity, zeal, and a life of holiness, who, after his death, deserved to obtain this praise: "That through the virtue of the sacrifice at Bosco and Oottolengo, he emulated expenses throughout his life." Finally, the patron addresses the ultimate question, namely...

[*Latin ed. p. 297*]

GENOA, 29th day of the month. Concerning whether a sanctuary should be erected within the parish, it is asserted that this is indeed necessary in order to remove the mixed jurisdiction, according to the mind of the Council of Trent, Session 24, chapter 18. Indeed, the parish priest of Ceranesi clearly demonstrated this, and the Archbishop also stated in his decree of May 20, 1890, that a new sanctuary and hospice had been established within his jurisdiction. Even more so, because the aforementioned parish priest expressly declared that, in this case, he would gladly cede his rights to the sanctuary. Furthermore, it must not be overlooked, the patron observes, that, when the question of mixed jurisdiction pertains to two parishes, the first doubt written at the bottom cannot be considered. However, the erection of this new parish requires all rights, because all that is required for establishing parishes exists: a magnificent and frequently visited church, a spacious and convenient hospice, an annual revenue of 35,060 livres, numerous buildings and properties belonging to the sanctuary, a rector with three chaplains residing there permanently, the first of whom receives a salary of 2,400 livres per year, and the others 1,400 livres per year, in addition to housing. And although the current number of ordinary inhabitants is not large, nevertheless, there is almost always a gathering of the faithful from all places, and it often happens that some of them stay there for several days. With all of this explained, the following doubts have been proposed: I. Whether the Church of the Blessed Virgin Mary of Guardiagrele, with all its parts and annexed buildings, falls within the limits of the parish of Saint Bartholomew of Livellati in this case. II.

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Whether the agreement initiated on April 8, 1873, between the Massari of the Church of the Blessed Virgin Mary of Guardiagrele and the Reverend Provost of Saint Bartholomew of Livellati is valid, namely: 1. Regarding the annual canon of 108 livres of Genoa to be paid by the aforementioned Massari to the Provost; 2. Regarding the right of the same Provost to the Church of the Blessed Virgin Mary.

[*Latin ed. p. 298*]

298 REGARDING Guardia: Concerning the journey from Guardia and the performance of the sacred functions there, according to the ancient customs in the case. III. Finally, should assent be given to the requests of the Bishop / petitioner, regarding the erection of the Sanctuary of the Blessed Virgin Mary at Guardia into a parish in the case? RESOLUTION. The Holy Congregation of the Council, after mature examination of the matters presented, decided in a plenary session on July 20, 1895, to respond as follows: To I. The proposed parties, as far as they wish, may exercise their right before the archiepiscopal court. To II. Negatively in all respects. To III. According to what has been explained, it does not seem opportune; and the Decree of May 20, 1890, should be observed. — REGARDING THE SOLUTION OF THE MEDIETARY TAX OF NOLANA. On July 20, 1895. Through summary petitions. The Nolan Bishop addressed the Holy Congregation of the Council with the following letter: By virtue of the Bull of Benedict XIII, the simple benefices, not provided by the Apostolic See, and even those benefices whose revenues exceed one hundred Roman scudi, are burdened with the mediatory tax; which, however, neither the Canons of the Cathedral nor the Collegiate Church of this Diocese have paid, nor would they willingly do so now, due to changed circumstances, and the burden of the inheritance tax, and royal decrees. It is now opportune to demand the payment of the mediatory tax, due to the construction of the Cathedral, for which a sum of money not insignificant has been assigned by the Government. With the above stated, the following questions are asked for a solution: I. Whether, by virtue of the repealed clause and the invalidating decree, it is possible to compel all new beneficiaries to pay the mediatory tax, including those who have not paid it in the last ten years. SUMMARY OF THE FACTS.

[*Latin ed. p. 299*]

NOLA, 299. Whether the burdens of the inheritance tax and the royal tax can be lessened, and whether the burdens of the benefice should be reduced by virtue of the Bull, are matters to be considered. III. Whether the burdens of the half-yearly tax should only apply to those benefices whose income exceeds one thousand livres. To this inquiry, the Sacred Congregation of Propaganda Fide, on September 9, 1893, decided to respond: "Considering the particular circumstances of the times and of affairs, and since

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these circumstances persist, nothing should be changed." The Chapter, noting this response, sought to demonstrate, with supporting documents, that this custom of the half-yearly tax, paid by benefices to support the Church, was based on a course of four or five centuries, and on Briefs and privileges granting such concessions, from many Popes, the first being Clement VII in the year 1524. It also sought to demonstrate that the right to demand the half-yearly tax was properly that of the Chapter, and not of the Bishop. In these circumstances, the prebendaries of the Cathedral of Nola, who follow, have proposed the following questions: 1.° Whether the Chapter of the Cathedral Church of Nola should be maintained in the venerable privilege or custom, confirmed by the Roman Pontiffs, which is still observed, of demanding half-yearly taxes from the diocesan benefices, according to the form and manner prescribed by Pope Benedict XIII. 2.° And, if so, whether the reason and manner of demanding these taxes, hitherto observed, can be maintained, namely, by requiring from those who do not pay them in present money, a written agreement whereby they obligate themselves to pay them as soon as possible? 3.° Whether, in the event of non-payment, the Canons, appointed by the Chapter, can compel the beneficed person to pay, either by bringing the matter before an ecclesiastical judge, or before a lay judge? The Bishop, consulted for information and a vote, reported on July 15, 1894: that the Chapter was truthful in its assertion regarding the collection of the half-yearly taxes, up to the publication of the Bull of Benedict XIII, Pius and merciful;* but that he did not know whether, after that time, this custom had continued, or whether the collection had been made by the Bishop himself, according to the provisions of the Bull.

[*Latin ed. p. 300*]

300 NOLANA, written; because documents confirming this are lacking. Therefore, the Ordinary requests that the Sacred Congregation declare whether this office should be entrusted to the chapter, or whether it should be exercised by the Ordinary himself, with the knowledge and consent of the chapter. The discussion concerning the *Mens Pontificis* in the Constitution "Pius et Misericors" is entirely clear. Firstly, it obligates all ecclesiastical benefices, of whatever kind, even those under curatorship, to pay a *media annata*, provided that these "together with uncertain annual revenues of one hundred Roman money scudi" exceed a certain amount. Furthermore, it exempts these benefages when they are "related to the collation, institution, and provision of the Holy See." Regarding the execution of the bull, the Pope ordered: "that the aforementioned *media annata* be deposited with a suitable person, appointed by the Bishops with the knowledge and consent of the chapter, and successively by the same, and, in the absence of the need to repair the Church, be invested, etc." Then, the Pope concludes with a "sublata" clause, to strengthen the force of the Constitution perpetually. - However, the intention and force of

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the "sublata" clause, with its decree of invalidating any contrary custom, is thoroughly examined by the law. Thus, the Sacred Congregation, in its decision in Reatina concerning the *media annata*, on May 16, 1789, § Casus; Ariminen, and in the decisions of March 13, 1841, and Rota, decision 575, n. 11, before Pene and Gerunden, on March 3, 1727, § 30, before Calcagn, and in the Sacred Congregation of the Council in Reatina, *Media annata*, on May 12, 1770, § Ad Primum; Tadertina *Med. ann.* per summ, precum, 1847. Regarding the burdens that affect the revenue of a benefice, and which are exempt from the payment of the *media annata*, the following should be considered: the response of the Sacred Congregation in Tivoli, *Media annata*, on May 4, 1754: namely, when it was asked "Whether fixed burdens and expenses should be deducted from the revenues of benefices, both those under curatorship and those not under curatorship," the Sacred Congregation responded "that fixed and real burdens should be deducted, but not personal ones."

[*Latin ed. p. 301*]

NOLANA 301 concerning benefices, in order that they be subjected to taxes and more. But, on the contrary, the decision of the Sacred Congregation for the Council must be considered in this very controversy, which states: "Considering the particular circumstances of the times and things, and since these persist, nothing should be innovated." The most prudent meaning of this response is that, notwithstanding the invalidating clause attached to Pontifical Constitutions, the circumstances of the times and the changes therein possess a necessary force, so that that which had previously been wisely established cannot, moreover, be urged forward by the force of legitimate contrary custom. For custom is a source of legal obligation, arising from the conditions of times and places, which legislators can foresee and, if they wish, prevent, but which they cannot prevent from having their legal effect. However, in the proposition of the first cause, the Bishop of Nola had indicated these circumstances of the times, which had induced a custom contrary to the Constitution of Benedict; now, however, the Cathedral Chapter and the Bishop himself do not hesitate to assert that there exists a praiseworthy custom of observing the same Bull, and that its execution is almost necessary for the needs of the Cathedral Church. - Therefore, the Most Eminent and Reverend Fathers have been asked to deliberate whether the precept "nothing should be innovated" should rather be interpreted to safeguard legitimately introduced religious customs. Because the Chapter and the Bishop raise several objections; all of them seem to be reducible to this: "Whether the Bull - *Pius et Misericors* - must be observed not only with regard to the payment to be made in the middle of the year, but also with regard to the manner in which it is to be demanded and administered." In this doubt, it is certainly the case that the Bull itself must be observed; for because the accessory follows the principal,

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it seems that, if you wish to answer that the Pontifical Constitution must be observed, it follows that it must be preserved in all its parts, in which, certainly, it would not be permissible for the Pontiff, with careful consideration and purpose, to derogate. - However, with regard to the manner in which this prestation is to be demanded, the ordinary method of collection should be observed.

[*Latin ed. p. 302*]

302 In NOLANA, the reasoning in similar cases must always be observed, while preserving the competence of the Ecclesiastical Judge. Having stated these things, the question arose as to what response should be given regarding the petitions. RESOLUTION. After discussion by the Sacred Congregation on July 2, 1895, it was decided to respond as follows: Considering the newly presented matters, and the doubts proposed by the Bishop in the year 1893 to the Congregation for Religious, concerning the future, it is possible to apply to all benefices designated in the Constitution *Pius et misericors* of Benedict XIII; therefore, also to the Canons and benefices of Cathedrals and Collegiate churches. II. Considering the particular circumstances, and if these circumstances persist, the answer is affirmative, provided that the matter is brought to the attention of the Most Holy Father. III. Negatively, and adhering to the Constitution of Benedict XIII, with the reservation of the right of the parish priests to appeal in each case for a reduction of the annual stipend. Regarding the questions proposed by the Chapter: I and II. The Constitution *Pius et misericors* must be observed; III. Affirmative, before the Ecclesiastical Judge.

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FROM THE HOLY CONGREGATION FOR BISHOPS AND REGULAR CANONS OF SAINT JOSEPH OF COSTA RICA (1) CONCERNING RESTORATION TO INTEGRITY.

On August 23, 1895.

SUMMARY OF THE AGREEMENT.

In the preceding year, a certain question was debated in the plenary session of the Most Reverend Fathers between the Bishop of Saint Joseph of Costa Rica and the priest Olympio Zill Desilles, concerning the removal from certain offices, the suspension, and the restoration of damages; and the following doubts were proposed:

I. Whether and how the provisions of June 5th and June 5th should be maintained.

(1) See the nature and treatment of this case in the initial proposal in the

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preceding volume, XXVII, 430.

[*Latin ed. p. 303*]

TO JOSEPH OF COSTARICA, July 30, 1891, concerning whether the Bishop of Costa Rica deprived the priest Zill Desilles of the office of Professor in the Seminary and of the position of Chaplain in the Institute of the Sisters of Zion in cases II? Whether and how the suspension imposed in case III is justified. Whether and what compensation should be given to the aforementioned priest for said removals and suspension. The Sacred Congregation responded on August 24, 1894, as follows: To I, affirmative in all. To II, considering all the circumstances present in the case, affirmative in all. To III, negative in all, and furthermore. Because the resolution was accompanied by a clause, and furthermore, which constituted the matter as judged, the priest Zill Desilles repeatedly petitioned for an extraordinary grant of a new hearing, and finally, the Moderators of the aforementioned Congregation, with questions!, or rather, referred the matter to the plenary assembly of the Most Reverend Fathers through the following rescript of June 8th of the past year: "It is proposed in the next plenary assembly of the Most Reverend Fathers, for consideration, the cited portion concerning the restoration in full, or the grant of a new hearing." The priest Zill Desilles insists on a review of the case for three reasons: 1. Because the defense and documents presented by the opposing party were notified or communicated at the very last hour of the case's presentation, making it impossible for him to examine and refute them. 2. Because almost all of the documents presented by the opposing party lack necessary authenticity: they are copies which the Bishop's Procurator in the City legally provided, without knowing the original characters and signatures. 3. Finally, because the Bishop, when requested to send the originals, sent only some of them, and after a long time. Reasons for denying the restoration in full. The Advocate, on the other hand, observed that the exception proposed by the priest Zill Desilles concerning the authenticity of the documents...

[*Latin ed. p. 304*]

304 Saint Joseph of Costa Rica bases his entire argument on this foundation: namely, that the documents in question, when compared with their originals, and examined in the presence of the priest himself, were found to perfectly correspond. 2. Furthermore, he declares that another exception must be rejected, namely, that the aforementioned documents were communicated only at the last hour; for in fact, they were presented within the time prescribed by the regulations of the Holy Congregation. 3. Finally, he states that another argument put forth by the priest must be disregarded, namely, that not all the documents were transmitted in their original form, as he himself requested on the day of September 1, 1894. Firstly, because the aforementioned priest, in a subsequent appeal, requested only the originals

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of certain documents, and these were sent; secondly, because these are truly those which can contribute to the merits of the case, and the originals of other documents which are lacking are not of such importance that the resolution issued based on them could be revoked. Therefore, since nothing new has been presented, he concludes that the petitioner's request must be rejected. Having stated these points relevant to the question of whether there is any reason for restitution in the case, the Holy Congregation, after deliberation on August 23, 1895, responded: Negatively.

FROM THE CONGREGATION FOR RITES OF SAINT JAMES OF CHILE. Doubts regarding the rights and privileges of titular bishops who are co-opted among the canons. The Most Reverend Marianus Casanova, Archbishop of Saint James of Chile, humbly presented the following to the Sacred Congregation for Rites: By a Decree issued by the same, on March 16, 1861, several abuses, contrary to the laws of the Church, and maintained under the pretext of long-standing custom, had been eliminated from his Archdiocese, and especially from the Metropolitan Church. When the Chapter of the metropolis...

[*Latin ed. p. 305*]

FROM S. C. RITUUM 305, it pertains that only one Archbishop and two titular Bishops are present; sometimes doubts arise concerning their rights and privileges. Hence, the aforementioned most obedient Archbishop requested a solution to the following doubts from the same Sacred Congregation of Rites: 1. Whether the archiepiscopal cross can be composed of a double hasta, both transverse and parallel, with another vertical one? 2. Whether the Archbishop can use the crozier when entering or leaving the Church, before and after the Pontifical Mass? 3. Whether the Archbishop, when celebrating Mass, can wear the pectoral cross over his chasuble? 4. Whether suffragan and titular Bishops can wear the mozzetta in a foreign diocese? 5. And can they use the pontifical zucchetto? 6. Whether they can also carry the pastoral staff in a foreign diocese? 7. And whether, when solemnly celebrating, they can sit in the Archbishop's or Bishop's own seat, or on the throne, with only the permission of the Ordinary of that place? 8. And finally, can they wear the doctoral biretta with four lappets, which is of violet color, with a tassel and cords of red color? 9. Canons, although distinguished by the dignity of the episcopate, should they associate with the Archbishop wearing the great cope when entering the metropolitan Church, whether to celebrate a Pontifical Mass, or to assist at a Mass being celebrated by another? And the aforementioned Sacred Congregation, with the reference of the undersigned Secretary, after a careful vote of another from the Masters of the Apostolic Ceremonies, and after all things were duly considered, decided to respond as follows: To I. Deferred. To II. and III. Negative, according to the Ceremonies of Bishops and Decrees: To IV. Negative, according to the Decrees, especially in Liburnen, September 23,

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1848, to II (1). For the convenience of readers, the decrees cited are included. (1) LIBURNEN, September 23, 1848. Doubt II. Whether (the Administrator of the Diocese) can use the mozzetta, or rather, should he only wear it over the rocchetto and mantelletta. Response to II. Negative to the first part, affirmative to the second. Acts, Vol. XXVIII, page OC O XXIX. 20.

[*Latin ed. p. 306*]

306 FROM THE SACRED CONGREGATION OF RITES: To V. is given the Decree in Velletri, September 6, 1698 (1). To V I. Affirmative, with the permission of the Archbishop or Ordinary Bishop of the place, and when they have held ordinations, consecrations, and other functions, in which, according to the rules of the pontifical book, they must use and it is necessary to use the pastoral staff, according to the Ceremonial, Book I, chapter 17, and the Decree of Bracharen, September 1, 1607 (2). To VII. Deferred. (1) VELLETRI: Regarding the doubts presented by the Most Eminent and Reverend Cardinal Peter to the Sacred Congregation, arising between the Suffragan Bishop and the Chapter, and the Canons of the Cathedral Church of the City of Velletri, namely: I. Whether at least some of the Canons of the Church of Velletri are obliged to go to meet the Suffragan Bishop up to the door of the Church, and there, by the same Canons, to offer a more worthy aspersorium, and in return to accompany him up to the same door, while wearing a cope, when he comes to perform pontifical functions, without in any way diminishing the custom of the predecessor? II. Whether they owe him a genuflection, and whether, with cushions and a rug for prayer before the Most Holy Sacrament, when he enters the Church on the occasion of functions? III. Whether, when performing general ordinations in any of the chapels of the same Church (due to an impediment to the main altar due to the recitation of the hours in the choir), some of the Canons should be present in the same chapel? IV. Whether, when attending a sermon, the greeting should be addressed to him first, distinctly from that of the Canons, and the secular magistrates, as long as he is in the presbytery? The Sacred Congregation, having heard the information presented both orally and in writing, responded: To I. It is permissible, with the license of the Most Eminent and Reverend Cardinal Dean, Bishop of Ostia and Velletri, to wear the cope; and in this case, two Canons are obliged to go to the door of the Church, and the more worthy one should offer him the aspersorium, with which the Suffragan Bishop sprinkles himself, and they should accompany him in return up to the same place. To II. According to the opinion of the Master of Ceremonies, namely, Negative. To III. The Pontifical Mass should be celebrated solemnly at the main altar, with the presence of the clergy. To IV. Affirmative; as long as he is in the presbytery. "And thus it was decreed, and it was ordered to be observed." September 6, 1698. (2) BRACHAREN. It was declared in the Sacred Congregation of Rites, at the request of the Archbishop of Bracharen, on February 21, 1604,

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that Dignitaries and Canons are to assist the Suffragan Bishop whenever he performs episcopal functions in the name of his own Archbishop, and to render him the same services; which they would render to the Archbishop himself when he performs the same functions, as was also declared in the same Congregation on March 20 of the same year, 1605: however, because the Dignitaries and Canons of the same Church of Bracharen have recently requested that it be declared whether they are obliged to serve and minister to the Suffragan Bishop in all things, and through all things, as they are obliged to serve and minister to their own Bishop?

[*Latin ed. p. 307*]

From the Sacred Rites, 307, Regarding the VIIIth. Negative, concerning the biretta of the doctoral form, according to the Decree in Venosa, December 7, 1844; (1) Affirmative, concerning the same Sacred Rites, after hearing the report of the Most Reverend and Right Reverend Cardinal of Monreale, who had previously handled this matter, declared as follows: It is not required that Dignitaries and Canons go out to meet the Suffragan Bishop upon his arrival at the Church, even to his chambers, as they are required to do for their own Archbishop, but it is fitting if some of the Canons go out to meet him as far as the door of the Church, and a more distinguished one offers him the aspersorium and accompanies him to the altar, or the place designated for celebrating or performing other functions; Also, it was declared that the Suffragan Bishop solemnly celebrating should not sit in the archiepiscopal seat, but should be seated in the stall on the epistle side, nor should he use the pastoral staff, unless he is holding Ordinations, or performing other functions in which, according to the rules of the Pontifical, he is required to use it, and it is necessary; nor should he have the assistance of two Canons, besides the Deacon and Subdeacon, who will chant the Gospel and the Epistle, as would be the case if his own Archbishop were solemnly celebrating, but it is sufficient if, besides the Deacon and Subdeacon, one of the Dignitaries or Canons assists him at the book, prepared with the aspersorium. Similarly, when a Suffragan Bishop is celebrating, it is not required that all the Dignitaries and Canons receive the sacred vestments, as would be the case if their own Archbishop were celebrating; but, besides the aforementioned ministers, all others should assist in their ordinary canonical attire, and likewise, when a Suffragan Bishop is celebrating, the seventh candlestick should not be placed above the altar, as it is placed when their own Archbishop is celebrating. In the other functions performed by the Suffragan Bishop, or another Bishop delegated by his own Archbishop, such as in the Ordinations of Clerics, in consecrations, and in the administration of the Sacrament of Reconciliation to altars and churches, or in similar ceremonies, the Dignitaries and Canons are required to assist the Suffragan Bishop in canonical attire, when they are not legitimately impeded, and from among them, the sacred vestments should be

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taken by as many Dignitaries and Canons as are necessary according to the rubrics of the Pontifical, and the form of the act which the said Suffragan Bishop is performing. And thus, in all things, as mentioned above, the same Sacred Rites considered it appropriate to declare. On September 1, 1607. (1) VENOSA. When the Chapter of the Cathedral Church of Venosa proposed the following two questions to the Congregation of Sacred Rites for a suitable solution, namely: I. Can he, to whom the faculty has been granted to wear the biretta with four lappets due to his Master's degree, Laurea, or License in the disciplines of Theology, or sacred Canons, use the same biretta? II. Will he be subject to the correction of the Chapter regarding the distribution of vestments, even if another priest in the same Church has used this faculty for forty years, and no one has objected? The same Sacred Congregation, convened in its ordinary assembly at the Vatican, with me as the undersigned secretary, considered it appropriate to respond to the proposed questions: Negative in all respects, namely, that he cannot use such a biretta in ecclesiastical functions, nor will he be subject to correction regarding the distribution of vestments, provided that the biretta is not a choral garment. December 7, 1844.

[*Latin ed. p. 308*]

308 ACCORDING TO THE SACRED RITUAL, the ordinary form is a violet biretta, with a tassel and cords of the same color, according to the privilege granted without distinction to all Bishops by Our Most Holy Lord Pope Leo XIII. On October 1st. The Decree of Gnesen and Posnania, March 20, 1869, (1) is affirmed and maintained. And thus it was responded. On September 6, 1895. L. M. CARD. PAROCCHI L. * S. ALOISIUS TRIPEPI, Secretary of the City and the World. Regarding Masses of the Saints, granted by indulgence to certain religious orders. What Pope Benedict XIV clearly teaches in *Opera de Beatitudine et Canonizatione*, Book IV, part II, chapter II, number 5, namely, that Masses celebrated in honor of the Blessed, or even of the Saints, which have been granted by indulgence to certain religious orders, cannot be celebrated by other priests, whether secular or regular; the Congregation of Sacred Rites had declared this long ago, and subsequently confirmed and upheld it with numerous particular or general decrees. Nevertheless, since Pope Benedict XIV himself stated this, it seemed incongruous that external priests, coming to the churches of the religious orders on designated days for a feast, would celebrate a Mass different from the one granted to those same religious orders; hence, the Supreme Pontiffs, in the very Brief of Beatification, extended the indulgence granted to the religious orders to all and each priests celebrating in those churches. This, however, was judged with greater deliberation and almost as necessary over time, since more and more Masses have been granted by indulgence to the same religious orders, or even to many particular churches, both for the Saints and for the Blessed; lest the laws established regarding the

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celebration of Masses should suffer confusion or easy transgression; or, indeed, their observance might become almost impossible. All of which, as has been stated repeatedly, and especially in one Roman Consultation, held on August 23, 1890, is related in Volume XII, 57.

[*Latin ed. p. 309*]

From the Sacred Congregation of Rites, the sum was 309 scudi; the Sacred Congregation of Rites, after careful deliberation, decreed that, in order to completely eliminate all difficulties in this matter, certain norms should be established for all priests in every case. Therefore, in the Ordinary Congregations held at the Vatican on the aforementioned date, the following general rule was established to be observed by all: All and each priest, whether secular or regular, entering a church or a public oratory, shall celebrate Masses, both for the saints and for the blessed, even those proper to religious orders, entirely according to the Office of that same church or oratory, whether those Offices are contained in the Roman Missal or in the Missal of religious orders: with the exception, however, of the particular rites proper to the Orders. If, moreover, the Office of a double rite is celebrated in the aforementioned church or oratory, each of the celebrants shall be free to say a Mass for the dead, or a votive Mass, or even a Mass for the day; with the exception, however, of those days on which the aforementioned Masses are prohibited by the rubrics of the Roman Missal, or by the Decrees of the Sacred Congregation. Concerning all of the above, a report was subsequently submitted to the Most Holy Lord Pope Leo XIII, signed by me, the Cardinal Prefect, and His Holiness approved and confirmed the judgment of the same Sacred Congregation; and, with supreme authority, completely abrogated all Rescripts or Decrees, both particular and general, that were contrary to this. December 9th, in the year 1895. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. L. & S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

From Langres: The Most Reverend Alphonsus Martin Larne, Bishop of Langres, humbly requested that the Sacred Congregation of Rites clarify the following doubts: Whether votive Offices are compatible with a primary feast of the same rite; and, conversely, whether a primary feast coinciding with votive Offices diminishes the Vespers? And the Sacred Congregation, with the fervent prayer of the other Apostolic Ceremonies...

[*Latin ed. p. 310*]

310 R. S. C. RITUUM. After mature deliberation, it was deemed fitting to respond to the following: Concerning the primary feast day and the commemoration of the votive office, it was thus decreed on August 23, 1895. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. L. S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation

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of Rites. A QUESTION concerning the litanies of the Most Holy Heart of Jesus. It was requested by the Sacred Congregation of Rites whether the Litanies of the Most Holy Heart of Jesus, which are circulated by the Decree of Pinerolo, although not having been approved by the Holy See, may be recited or sung in public churches or chapels, at least outside of strictly liturgical functions. The same Sacred Congregation of Rites, after mature deliberation regarding the following report of the Secretary, deemed it fitting to respond: Negatively; and that any decree to the contrary is superseded by the subsequent General Decree, issued on March 6, 1894, which prohibits all litanies, unless they are found in the Breviary or in the more recent editions of the Roman Ritual, approved by the Apostolic See (1). And it was ordered that this be observed. On November 28, 1895. CAL L. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites. MORE SERIOUS ADMONITIONS concerning the opening of the Holy Tabernacle, concerning the distribution of Holy Communion to the faithful, and concerning the carrying of the relics of the Blessed in public processions. I. In a certain French periodical, it is read that a priest may open the sacred Tabernacle for his own private devotion, for the adoration of the Sacrament, to offer prayers at will, and then to close it again: And this is said to be legitimately inferred from certain Decrees of the Sacred Congregation. In the name and with the authority of the Sacred Tribunal (1) *Recollections, Vol. XXVII, 439.

[*Latin ed. p. 311*]

FROM THE SACRED RITUAL, 311. We hereby inform all our readers that what has been published in the French *Ephemeris* is simply false, and the assertion is entirely illegitimate. The private Mass differs from the solemn Mass in that the former is celebrated with a chalice, while the latter is celebrated with a ciborium; but both are instituted for the good of the public, in no way for a private person. Elsewhere, it is written that Communion cannot be given to the faithful without a very serious reason, neither immediately before nor immediately after Mass; and reference is made to a recent decree of the Sacred Congregation. In the same name and with the same authority, we declare that what is asserted is simply false, and that the decree, if it exists, is apocryphal, although it is generally named, but is not presented. For the sake of clarity, let the following declaration, given to us on November 28, 1895, be noted: "There is no decree of the Sacred Congregation that prohibits Communion to the faithful before or after Mass; and both the Director of the *Ephemerides liturgicarum* and the Director of the *Analecta Ecclesiastica* will ensure that this resolution is brought to the attention of the readers." PHILIPPUS DI FAVA, Substitute of the Sacred Congregation. Communion to the faithful immediately after Mass is permitted according to the rubric of the Ritual, as priests know; indeed,

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it says in the Ritual, for a reasonable reason, but this, considered in the conditions of our times, is easily present, and should always be considered generally present, when Communion is requested. It is also undoubtedly possible to distribute Communion immediately before Mass, for the same reason as above, and in the same way, as we have said, although the Ritual is silent on this matter. Thus, the common and commendable practice of the city is: this is the mind of the Church: this must be held, and acted accordingly. III. Finally, in the name and with the authority of the same Sacred Congregation, we remind all that whatever relics and bodies of the Blessed cannot be carried in public processions, as the relics and bodies of the Saints can be carried. This prohibition is of great weight, and it is not permitted to anyone to violate the law, which has been repeatedly confirmed by decrees, whether particular or general, and by the Supreme Pontiffs.

[*Latin ed. p. 312*]

From the Secretariat for Briefs, a Brief from His Holiness Leo XIII, by which the Constitutions of the Congregation of the Most Holy Sacrament are approved. The distress of Our soul, conceived from so many and such grievous afflictions of the Church, is certainly alleviated in no small measure by the piety of Catholic men, who, with constant prayers and pious works, strive to appease and propitiate God the Redeemer, who has been violated and vexed by curses and injuries. It consoles Us, and leads Us to hope for a better age, that the Spirit of grace is poured out upon the House of David, and upon the inhabitants of Jerusalem; that no less praise is given to those who rightly defend the cause of the Catholic name, than to those who, through wicked deeds, oppose it; and that, finally, when the children of the Church, her sons, have caused affliction and sorrow, there are not lacking loving and devoted sons who offer her consolation and reparation. And indeed, it is well known that, in this age and somewhat later, there have been in Gallia the most bitter enemies of religion, who, having rejected the divine nature of Jesus Christ, have elevated the August Sacrament, in which there is nothing salutary for men, and have refuted the mystery. Against these, men of outstanding virtue joined together in a society, to which the name has been given: the Congregation of the Most Holy Sacrament. This kind of Institute, founded in Lutetiae, by Peter Julian Eymard, arose as a small seed, and then, by the grace of God, and by the favor of Our predecessor, the blessed and revered Pope Pius IX, it was seen to grow rapidly into a useful and abundant harvest. The Congregation, as a sacrifice of expiation devoted to God, has as its purpose a salutary and holy end, which it seeks to achieve in many ways, especially through perpetual adoration of the August Sacrament, from which are joined thanksgiving, propitiation, and supplication. For what is more fitting than that men should worship and venerate the highest majesty of God with a humble and contrite spirit, as is fitting for weak and mortal beings? It is also fitting

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that, mindful of the greatest benefits they have received, and those they will receive, they give thanks for them, and that they express a grateful spirit; that they offer consolation to their brothers who have gone astray.

[*Latin ed. p. 313*]

From the Briefs of the Secretariate 513, and in order that errors may blind them not to God, but rather may please and render Him propitious, let them implore forgiveness from Him; so that, finally, they may obtain all those things which are not only necessary for the eternal salvation of souls, but also useful and opportune. It is, moreover, the duty of the Congregation to implore the most holy Virgin, Mother of God, to be a companion and participant in their endeavors, for through her, no one knows or can pour forth greater charity towards Jesus. Secular priests should sometimes invite members of the Congregation to their dioceses, as if to a sacred retreat, and encourage them to promote the worship of the Most Holy Sacrament; they should instruct children in the mysteries of the Eucharist according to the discipline of religion; in monasteries, in parishes, in public and private churches, they should inflame minds and stir up wills to frequently celebrate the Holy Sacrifice, to frequently partake of the Sacrament of divine love; finally, whatever may be useful in promoting the worship of the Most Holy Sacrament, either from the sciences or from the liberal arts, let them diligently contribute, so that the purpose may be fulfilled. For this purpose, statutes or rules have been given to the Congregation, the first words of which are "these are the smallest of the Holy Mother Church's family," and the last words are "in which she found and left her home," and a copy of which we have ordered to be kept in the archives of our Secretariate. Now, since such is the purpose of the Congregation, it is easily understood what spirit should animate the members, namely, the spirit of love, humility, by which they renounce themselves without self-regard, of truth, of simplicity, of obedience, not only towards Us and this Apostolic See, but also towards the superiors and moderators of the Congregation. With all these things in mind, when the most reverend superiors of the Congregation of the Most Holy Sacrament recently made supplications to Us, so that, just as Our predecessor, Pope Pius IX, approved the aforementioned Congregation for a time, so too We might confirm it and ratify its statutes and rules. We, who desire nothing more and have nothing more at heart than that the Sacrament of the Eucharist may increase day by day among the Christian people, benignly receive these prayers, approve the Congregation of the Most Holy Sacrament, confirm it forever, and declare all those things ratified which Our aforementioned predecessor sanctioned and approved for a time concerning it. We decree that these Our letters shall be firm, valid,

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and efficacious, and shall have their full and complete effect.

[*Latin ed. p. 314*]

314 In order to obtain and possess a *Secretaria Brevium* [a document issued by the Vatican Secret Archives], and so that those to whom it pertains, and who may in the future pertain to it, may fully and completely benefit from it in all things, it is necessary that such documents be judged and defined by any Ordinary Judges and Delegates, and that they be declared invalid and void if, concerning these matters, anyone, with any authority, knowingly or unknowingly, should attempt to interfere. Notwithstanding any Apostolic Constitutions and Ordinances, and any other contrary regulations whatsoever. Given at Rome, near Saint Peter, under the Fisherman's Ring, on the 12th day of August, 1895, in the 18th year of Our Pontificate. C. CARD. DE. RUGGIERO L $ S. FROM THE SACRED CONGREGATION OF THE INDEX. Friday, December 6, 1895. The Sacred Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, which is entrusted with the Index of books of pernicious doctrine, their condemnation, proscription, expurgation, and suppression throughout the Christian Republic, on June 14, 1895, condemned and condemns, proscribes and proscribes, or ordered and orders that the following works be referred to the Index of Prohibited Books: *Il Papa-Re* [The Pope-King] *et Tribunale di Cristo e dei Santi* [and the Tribunal of Christ and the Saints] – Published by Father Girolamo da Montefalco of the Order of the Preachers (under a false name) – Rome – Elzevirian Printing House – September 20, 1895. As condemned according to the Rules of the Index. Giovanni Bovio – *Il Millennio* [The Millennium] – Three treatises with a preface – 10th edition, 1895 – Naples – Edition of the *Periodico Fortunio*, 24 Egiziaca a Pizzofalcone. *La Cité Moderne* [The Modern City] – *Métaphysique de la Sociologie* [Metaphysics of Sociology] – by Jean Izoulet, former student of the École normale supérieure, Doctor of Letters, Associate Professor of Philosophy at the Lycée Conclorcet – Paris, former bookstore Germer Baillière et C. – Felix Alean, Publisher, 108 Boulevard Saint-Germain – 1894.

[*Latin ed. p. 315*]

FROM S. C. INDEX 315, Eaposo Americo — Mystical Neurosis — Observations on the origin of the cult dedicated to the Heart of Jesus. — Domingos de Magalhâes Editor, 54 Rua do Ouvidor, Modern Library, Rio de Janeiro, 1895. — As condemned. J. Jesupret fils; Author of the work. — Catholicism and Spiritism, Paris, at the Library of Psychological Sciences, rue Chabanais 1, 1891. — Prohibited. Decree of April 7, 1892. — Voluntarily submitted and the work condemned. Author of the work. — Certain documents from Holy Scripture with the teachings of Saint Hildegard concerning rationality (V. Migne 888, D. and Pitra 249, III, 511. A. B. C.

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D.) and of ancient times. — Compiled with care and study by Father Augustine Damoiseau — Genoa, Typography of the Royal Institute for the Deaf, 1894. — Little Gospel — God is Charity — that is, a collection of various spiritual writings concerning the life of love. — Genoa, Typography of the Royal Institute for the Deaf, 1894. — Prohibited. Decree of April 14, 1895. — Voluntarily submitted, and the work condemned. Therefore, no one of any rank or condition may dare to publish, or to read or retain, the aforementioned works, wherever and in whatever language, but must deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been reported to me, the undersigned, S. I. C. from the Secret Archives, were approved by HIS HOLINESS, and He commanded that they be promulgated. In witness whereof, etc. Given in Rome, on December 6, 1895. f SERAPHINUS CARD. VANNUTELLI, BISHOP OF TUSCULANUS, PREFECT. Fr. MARCOLINUS CICOGNANI, PROC. GEN. O. P. from the Secret Archives. Place of the Seal. December 9, 1895. I, the undersigned, Mag. Cursor, testify that the aforementioned Decree was affixed and published in the City. Vincent Benaglia, Mag. Cur s.

[*Latin ed. p. 316*]

316 APPENDIX III. EXHIBITING THE ACTS OF THE APOSTOLIC SEE; WHICH HAVE LONG BEEN ESTABLISHED OR WHICH HAVE RECENTLY ADDRESSED THE MODERATOR OF THE EPHEMERIDES. Apostolic Letter of Pope Benedict XIV, August 22, 1741 (to all Bishops). Concerning the observance of Lent. In the highest universal administration of the Church, and through merits that are not equal, by the ineffable abundance of divine goodness, those who, as defenders of the orthodox faith, are also constituted guardians and avengers of ecclesiastical discipline, have sought to restore, especially the Lenten fast, which among the principal tenets of orthodox discipline, has always and everywhere been observed from the very beginning of the Church, and to defend it from the corruption that threatens it today, and to restore it to its former observance, as far as it can be achieved, we have endeavored, through other letters of a similar form, addressed to your Fraternities on the tenth day of the past month of May of the current year, to stir up the outstanding zeal of your Fraternities, so that you might strive to ensure that this matter would not lack the alleviation of the sorrows of our Apostolic concern, and the remedy for the salutary abolition of the corruption of the Holy Fast. Since, however, we are not unmindful of the paternal pontifical charity, which knows how to support the weaknesses of the infirm, and even to become infirm with those who are infirm, and as we have judged it to be an act of Apostolic benevolence to grant dispensations from the fast at times for a legitimate reason, or due to a very urgent necessity; so, among

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other things, we have prescribed that only one meal should be observed, and that the permissible and prohibited foods should not be distinguished at all. Hence, it has come to our knowledge that there have been those who, through human and, to those who abhor Christian penance, worthy arguments, persuade themselves and others that only one meal should be observed, and that the permissible and prohibited foods should not be distinguished at all, either indiscriminately for the multitude due to a very urgent and serious necessity, or for individuals due to a legitimate reason, and with the advice of both physicians. This persuasion, which is alien to our judgment, we seek to remove completely from the minds of all, whether it is indiscriminately for the multitude due to a very urgent and serious necessity, or for individuals due to a legitimate reason, and with the advice of both physicians.

[*Latin ed. p. 317*]

APPENDIX III. 317. And those who, by the advice of physicians, are permitted, provided that there is no certain and dangerous reason affecting their health, and unless otherwise it is absolutely necessary, to partake of food during Lent, and at other times of the year, and on days when the consumption of meat, eggs, and certain other foods is prohibited, We declare and ordain by these presents that all, without exception, must observe only one meal, and that lawful and prohibited foods must not be mixed together; as We expressly prescribe and command to each, of both sexes, who are subject to bodily infirmities, that they may be granted permission to eat during the most holy Lent, and on other days dedicated to fasting, as We have done in Our separate briefs to each. Therefore, We beseech and implore the Brotherhoods to exhort the people entrusted to their care to diligently and paternally urge them to apply the most holy remedy of fasting to heal the wounds by which each is afflicted through human weakness; and to remind them that this is not a minor matter, but a very serious one, concerning the observance and endurance of fasting, for the purification of souls and bodies. Therefore, let them aspire to the heavenly rewards, which are not worthy of the passions of this time; rather, let the slight and momentary discomfort of our modest abstinence work great merit for glory in heaven. Let those who contend in the arena abstain, that they may receive a perishable crown; let those who are so weak and delicate, soldiers of the Christian army, be ashamed of refusing to participate in the sufferings of Christ, who promises an incorruptible crown to those who lawfully strive for it; under whose auspices and pledge We give to Your Brotherhoods Our Apostolic blessing, etc. From the Letters of Pope Benedict XIV, July 8, 1744 (to the Archbishop of Compostela). Doubts concerning fasting. With the utmost paternal charity, We embrace the most observant Spaniards of the Roman See, and We have made so many supplications for you, that We are pleased to devote Our attention to your anxieties, and We Ourselves have decided

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to resolve the questions you have proposed. Thus the matter stands: — 1. Whether those things which are prescribed in Our aforementioned briefs concerning the single meal, and the separation of foods (1), are prohibited even under a serious precept. — We answer: Granting the faculty (1) See the preceding letters.

[*Latin ed. p. 318*]

518 APPENDIX III. Concerning the eating of meats during the prohibited time, it is to be understood that these same permissions are to be granted only under the following conditions, namely, that it be done only once a day, and that the meals not be mixed. Those who avail themselves of these permissions are to be strictly obligated to observe both of these conditions.

2. Can those to whom it is permitted to eat meat partake of meat in the evening meal in such quantity as is permitted to those who are fasting? — We respond: It is not permitted, but they must use that food, and that portion, which is used by those who are fasting with a right and conscientious observance.

3. Are those who are permitted to eat meat during the time of fasting also obligated to observe the hour prescribed for those who are fasting? — We decree that it must be observed by them.

4. What are the permissible meals that are forbidden to be combined with the prohibited foods? — We respond: The permissible meals for those to whom it is permitted to eat meat are the meat itself; the prohibited meals are fish, and therefore both cannot be used together. However, those to whom only the permission to use eggs and dairy products is granted are not prohibited from eating fish.

5. Does the prescription regarding the non-mixing of both types of meals also apply to Sundays during Lent? — It is affirmed that it applies.

6. Does this law also apply to those who, by the Bull of Cruciatae, are permitted to eat eggs and dairy products? — We write: Nothing in our pronouncements pertains to the gracious Diploma of Cruciatae. Therefore, those who enjoy this [permission] should strictly and carefully observe its terms, and conduct themselves according to its dictates. They should take care not to consider themselves excused from the laws prescribed therein by any empty excuse.

7. Do the aforementioned two precepts apply outside of Lent? — It is answered: Both precepts apply outside of Lent; that is, the precept of a single meal, along with the other laws expressed in the second and third responses pertaining to this matter; and the other, of not mixing permissible meals with prohibited meals, as defined in the fourth response.

S. C. S. Office, May 27, 1671. — Concerning the eating of prohibited foods among heretical and non-Catholic people. In the diocese of Sylvaeducensis,

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many rural laborers and mechanics of meager fortune are compelled to pay heavy debts.

[*Latin ed. p. 319*]

APPENDIX III. 319 Hence, in order to acquire means to bear these burdens and to obtain suitable food, many thousands of both sexes annually travel to Holland, England, and other places, and offer their services in such tasks, even to lords and masters, who only allow forbidden foods to be served on the days of fasting and on the Sabbath, and in the absence of other food, Catholic workers partake of these things. The question arises whether this is permissible? Answer: If lords or masters prepare these foods for Catholic servants and compel them to eat them in contempt of Catholicism, then it is not permissible for them to eat them without protest. However, if they do so not out of contempt of Catholicism, but for the sake of the lord's economy, and if no other food is available, then, in this necessity, the servants may eat the forbidden foods without protest; and this, provided they do not find other lords who would allow them to observe the Church's precepts. Sacred Congregation of the Holy Office, March 13, 1727. Doubts concerning the Greeks residing in Rome regarding the eating of meat on the Sabbath. 1. Is it permissible for Greeks residing in Rome (at least to avoid scandal) to eat meat on the Sabbath? 2. Is it permissible for Greeks to have Latin servants, and to give them meat to eat on the Sabbath? 3. Is it permissible for Greeks to offer meat to Latin boys and young men who are not in their service on the aforementioned day? Answer: 1. It is not permissible, and the Instruction of Clement VIII should be observed, in which it is stated: "The custom of eating meat on the Sabbath is to be tolerated among the Greeks," where it can be done without scandal, "only in their own places, and among themselves." 2. and 3. Latin servants of the Greeks are to observe the Latin rite, and therefore the Greeks sin when they offer forbidden foods to their servants at a time when they ought to abstain. Sacred Congregation of the Holy Office, March 23, 1656 — Missionaries. A doubt concerning the positive law to be explained to new Christians. Whether missionaries, when they first baptize new Christians, ought to explain the positive law, as if it were obligatory under mortal sin, with regard to fasts, festivals, confessing once a year, and receiving Holy Communion.

[*Latin ed. p. 320*]

320 APPENDIX III. ... Regarding feasts, Confession, and Communion, the reason for doubt is this: because the majority of Christians must work to earn their livelihood, and often Christians are compelled by unbelieving prefects to perform various labors on feast days. These prefects, moreover, are required to attend the tribunals even on days which are holy among us, under penalty of deprivation of office. The missionaries are few in number, while the territory is vast; therefore, many Christians are unable to attend

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Mass on feast days, to confess once a year, and to receive Communion. The Sacred Congregation, considering what has been stated above, judged that the positive ecclesiastical law, concerning fasting, the observance of feasts, sacramental Confession, and Communion once a year, should be made known to the Christian missionaries in China, as being obligatory under mortal sin; yet, at the same time, the reasons by which the faithful are excused from the observance of these precepts should be explained. If it pleases the Holy Father, it may be granted to the missionaries to dispense in particular cases, at their own discretion. — The Holy Father approved. Sacred Congregation for the Propagation of the Faith — C. P. for China, January 31, 1796 — Vicariate Apostolic of Sutchuen. Regarding the attendance at Mass. Whether the faithful are bound to attend the sacrifice of the Mass on Sundays and feast days, in which they are able to be free from servile works. Answer: Affirmative, according to the response of the Sacred Office of July 13, 1769, and the Sacred Congregation for the Propagation of the Faith of January 13, 1794. However, since in certain regions there is such harshness and isolation, that to reach the places where the sacred rites are celebrated, one must travel a long and often very difficult distance from other places, and therefore, even in undertaking the journey, there would scarcely be enough time left to perform the servile works which are permitted, it should be consulted with the Holy Father for permission to grant, in the name of the Holy See, dispensations to the Apostolic Vicars themselves, or to others delegated by them, from the obligation to attend Mass on feast days, in which servile works are permitted, since it seems opportune in the Lord, considering the situation of the regions and the needs of the inhabitants. — His Holiness deigned to graciously assent.

[*Latin ed. p. 321*]

APPENDIX III. From the Sacred Congregation of the Propagation of the Faith, January 30, 1765 – Regarding the missions in Hu-Guang. Concerning a dispensation from fasting. It seems necessary that the Christians of those missions be dispensed from abstaining from meat on the last day of the Chinese year, and also on the two first days of the following year, provided that these days fall on a weekday, or the sixth day, or the Sabbath; and they present the following reasons for obtaining this dispensation, namely, that the aforementioned days are more solemn among the Chinese, that it is no easier for them to abstain from meat on those days than it is for us on the third day before Ash Wednesday, and that if only the Christians, mingled with a large number of non-believers, abstain from eating meat, it will cause them great hatred and annoyance. R. Negative, and the decree of the year 1760 (1) is to be observed. From the Sacred Congregation of the Propagation of the Faith, July 12, 1770 – Regarding the vicariate apostolic of Fokien. Concerning a dispensation for the Chinese from fasting. Since the second day of the first moon of the Chinese year will fall on the day

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of Ash Wednesday in the following year, a doubt has arisen among these missionary Fathers, and I have been asked by them: Are the Chinese obligated to fast and abstain from meat on that day? However, since I see in the perpetual calendar, printed and characterized in the Chinese language by order of the ancient missionaries, the following note: "That if the first moon of the Chinese year falls within the season of Lent, the Chinese are not obligated to abstain from meat, nor to fast on the last day of the last moon, and on the two first days of the first moon," I believe that this custom has been approved and publicly proclaimed in that kingdom by the ancient missionaries; and that many Chinese have this calendar in their hands, so that they may know on each day what feast the Holy Mother Church celebrates. I have not dared to respond contrary to this custom, and I beg that in the following years the Sacred Congregation will deign to respond whether such a custom should be condemned and eradicated, or tolerated; and if it is to be condemned, that it will deign to send us a decree of condemnation. R. The decrees previously issued are to be observed, and it is to be written to the vicars apostolic of both Tunkin, as well as to the vicar apostolic of Fokien, that they should undertake the execution of these decrees, and that they should inform the Sacred Congregation whether they are making progress in carrying them out. Furthermore, they should take care to have the note deleted from the calendar, namely, that the faithful are dispensed from abstaining from meat on the first three days of the new year, if those days fall within the season of Lent. (1) See page 322. Acts, Volume XXVIII, page OCCXXX. 21.

[*Latin ed. p. 322*]

322 APPENDIX III. Sacra Congregatio de Propaganda Fide, 2 Januarii, 1888 – Epistola ad Vizagapatam. Dubium de audientia Missae a Neophytis. Cum sit magna repugnantia inter feminas superiorum tribuum (caste) comparandi coram Europaeis, vel sub eodem tecto commorandi cum personis inferiorum tribuum, quo fit ut neophytae nostrae saepe aut graviter irrideantur, aut etiam a recipiendo baptismo avertantur: quaeritur utrum Episcopus eas nihilominus excitare debeat, quemadmodum adhuc fecit, ut assidue divinis officiis adsint: an debeat potius petere a Sacra Congregatio ut eas interim ab hac adsistentia dispenset. R. Neophytas huiusmodi monendas esse de praecepto ecclesiastico circa auditionem Sacri et cetera hominis christiani officia fideliter adimplenda, ita tamen ut, circa modum adimplendi, morum et institutorum gentis prudens ratio habeatur. Sacra Congregatio de Propaganda Fide, 28 Februarii, 1760 – Vicariatus Apostolicus Tunkini Occidentalis et Provincia Tunkini Orientalis. Quoad ieiunium. In Regno Tunkini, antiqua ab omni retro memoria, traditio est privilegium his neophytis ab Apostolica Sede pro tribus primis anni novi diebus, in quamcumque diem, sive abstinentiae, sive ieiunii inciderint, fuisse concessum, ut carnibus vesci possint, ne

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caderent in offensam eorum quos his diebus reverentiae aut urbanitatis gratia, visitare tenentur, si oblatis cibis uti recusarent. Huius quidem concessionis nullum nunc in hac Missione transumptum reperitur, sed immemorialis possessio tituli sufficientem locum tenere videtur.... Humillime recurrimus ad Sacram Congregationem supplicantes edoceri an revera extet supradictum privilegium hisce neophytis pro tribus primis anni novi diebus a Sacra Sedeb concessum; casu vero quo non extet, enixissime supplicamus pro impetratione talis privilegii, ad vitandum periculum violandi praecepti ecclesiastici, cui ineluctabiliter exponuntur christiani in toto hoc Regno, exceptis forte aliquot pagis qui, Deo miserante, toti fidem christianam sunt amplexati. R. Privilegium (de quo quaeritur) non extare, nec esse generaliter concedendum; sed quoad abstinentiam a carnibus servandum esse decretum anni 1663 oratoribus prout iacet transmittendum; quo vero ad ieiunium citra abstinentiam a carnibus, teneri neophytae, si primi dies anni annamitici inciderint in feriam sextam, vel aliam diem qua nullo privilegio apostolico a ieiunii lege eximuntur.

[*Latin ed. p. 323*]

323. BY PAPAL BULL: Of the Most Holy Pope Leo XIII, concerning the pontifical commission for fostering reconciliation with those separated from the Church. We earnestly desire that the reconciliation of those nations, which at one time, and for various reasons, separated themselves from the Roman Church, be brought about; therefore, we propose to initiate new endeavors and to offer invitations filled with charity, as we have diligently striven from our apostolic letter *Praeclara*. — Indeed, we have approached the matter, as we have previously noted, which requires a long and laborious undertaking, and the benefits of which will not be immediately apparent. However, apart from the utmost trust in divine assistance, which is the greatest support, the best aids are those that are offered to us; and it has seemed fitting, given the gravity and extent of the cause, to associate with us in counsel a number of our most beloved sons, Cardinals of the Holy Roman Church. We originally intended these gatherings to concern the affairs of the Eastern churches; and therefore, we have summoned and invited the present Venerable Fathers, Patriarchs of those same nations, to be heard. This has been accomplished successfully, so that certain fundamental principles regarding the churches have been published by us not long ago, in the constitution *Orientalium*, which defines and decrees: these, although they pertain more directly to the preservation and protection of the legitimate Catholic discipline of the East, are also clearly conducive to the restoration of unity among other nations. — We consider this to be the first fruit of these gatherings, and understanding that, in continuing them, a considerable amount of assistance may be expected for the other purposes proposed, we have resolved to provide that this undertaking may remain and flourish

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with greater certainty and constancy, as long as circumstances require, according to our wishes. Therefore, expressing our opinion in these letters, we establish and decree a special and stable Council, or, as they say, a Commission, dedicated to the proper task of fostering the reconciliation of those who are separated. It will consist of several Cardinals of the Holy Roman Church, whom the Pope will specifically designate, to whom...

[*Latin ed. p. 324*]

324 By a MOTU PROPRIO, He presided, and those who were present before Him held a convocation. The names of those present, according to the established custom, are: PRIMISLAV LEDOCHOWSKI, BENEDICTUS MARIAM LANGENIEVX, MARIANUS RAMPOLLA DEL TINDARO, VINCENTIUS VANNVTELLI, ALOISIUS GALIMBERTI, HERIBERTUS VAVGHAN, IOSEPHUS MARIAM GRANNIELLO. Furthermore, as is customary in sacred urban councils, there will be a suitable number of Consultors, also to be appointed by the Pontiff; and among these, those whom the Eastern Catholic Patriarchs, acting as their legates in the City, shall have designated individually, will hold an equal place. The Consultors shall contribute their knowledge, prudence, and experience in examining and instructing concerning the matters which are brought before the Pontiff and the Cardinals, as mentioned above; but he among the Consultors to whom the Pontiff shall entrust the duty of recording the proceedings of the Commission will, for that reason, be permitted to attend, by right, the aforementioned pontifical congregations. These councils and decrees, the outcome of which we commend especially to the auspices of the most provident God, we wish and order to be established and confirmed by Our authority. Given at Rome, at Saint Peter's, on the nineteenth day of March, in the year one thousand eight hundred and ninety-five, in the eighteenth year of Our Pontificate. LEO PP. XIII.

[*Latin ed. p. 325*]

525 FROM THE ACTS OF THE CONSISTORY, ADDRESS OF HIS HOLINESS POPE LEO XIII, GIVEN ON NOVEMBER 29, 1895. All of Europe, filled with expectation and anxiety, turns its gaze towards the Eastern regions, which are weary from internal conflicts and grievous suffering in Kosso. Truly a painful and lamentable sight: towns and cities stained with blood, vast regions devastated by iron and fire. — While the leading men, whose greatest glory it is, deliberate together, seeking to restrain the calamities and secure the safety of the innocent, We, for Our part, do not fail, as far as it is in Our power, to strive for this most noble and just cause. Indeed, even before these most recent events, We have striven with the greatest willingness for the benefit of the Armenian people, and, having sought the authority of the Most High Prince, We have promoted concord, gentleness, and justice. These Our endeavors have not, We believe, been displeasing.

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Having begun to pursue this, the aim is: for We desire nothing more than that, within the boundaries of the great empire, the safety and all the rights of each individual be preserved, as is fitting, and that all things be holy. Meanwhile, We have hastened to offer timely aid to the afflicted people of Armenia, providing assistance to those most sorely struck by calamity. But Our efforts on behalf of the Armenians are a testament and a fruit of the greatest charity, with which We pursue all peoples from the East; with whom, as you well know, We desire and strive to share the benefits of eternal salvation, and whatever is within the power of the Catholic Church. Therefore, those who disagree with Us in faith, We seek to bring back to concord; those who agree, We seek to bind more closely to Us; and all, We seek to help with all Our power and to adorn. With this intention and counsel, We have recently issued Apostolic Letters, from which it is easily understood what Our sentiments are towards the Copts. For, having learned of their piety and the growth of the Catholic faith in Egypt, We have striven to restore the Coptic hierarchy, and the patriarchal dignity for the Copts to the Alexandrian See, which was ennobled by the Evangelist Mark, and by the same Pontiff.

[*Latin ed. p. 326*]

326 FROM THE CONSISTORY ACTS: To fulfill the most esteemed order of your ranks, venerable brothers, it seemed fitting to select outstanding men from Italy and the Austrian Empire, from France and Spain, whom we would today elevate with the honor of the Cardinalate. All are in the dignity of the episcopate; and all have earned merit through the gravity and integrity of their conduct, the praise of their doctrine, the exercise of their duties, and the wise administration of their offices, concerning both ecclesiastical matters and the Holy See. These are: ADOLF LUDWIG ALBERT PERRAUD, Bishop of Autun, whom the Holy Roman Church created a Cardinal and reserved in pectore on the sixteenth day of January, in the year one thousand eight hundred and ninety-three, in the Consistory; SILVESTER SEMBRATOWICZ, Archbishop of Lviv of the Ruthenians; FRANCISCUS SATOLLI, titular Archbishop of Naupactus, Apostolic Legate to the federated states of North America; IOANNES HALLER, Archbishop of Salzburg; ANTONIVM MARIA CASCAJARES Y AZARA, Archbishop of Valladolid; HIERONYMVS MARIA GOTTI, titular Archbishop of Petrensis, serving as Apostolic Delegate in Brazil; IOANNES PETRUS BOYER, Archbishop of Bourges; ACHILLES MANARA, Bishop of Ancona and Numana; SALVATOR CASANAS Y PAGÈS, Bishop of Urgel. What do you think? Therefore, by the authority of Almighty God, and of the Holy Apostles Peter and Paul, and by Our own authority, We publicly proclaim: ALBERT LUDWIG ALBERT PERRAUD, a Priest, to be a Cardinal. Furthermore, We publicly proclaim: SILVESTER SEMBRATOWICZ, FRANCISCUS SATOLLI, IOANNES HALLER, ANTONIVM MARIA CAS-

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CAJARES Y AZARA, Priests, to be Cardinals.

[*Latin ed. p. 327*]

FROM THE CONSISTORY ACTS 327. JERONYM MARIAM GOTTI, IOANNES PETRUS BOYER, ACHILLE MANARA, SALVATORE CASANAS, Y PAGES. With the necessary and opportune dispensations, derogations, and clauses. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen. Following the allocution, the Most Holy Father proposed the following churches: The titular Patriarchal Church of Antioch, of the Latin rite, vacant due to the death of the Most Reverend Vincent Tizzani, the last Patriarch, who died near the Roman court, with the favor of the Most Reverend Father Francis Cassetta, Archbishop of Macerata. The titular Patriarchal Church of Constantinople, vacant due to the death of the Most Reverend Julius Lenti, the last Patriarch, who died outside the Roman court, with the favor of the Most Reverend Father John Baptist Marchionis Casali del Drago, a Roman priest. The Archiepiscopal Church of Perugia, vacant due to the death of the Most Reverend Frederick Foschi, the last Archbishop, who died outside the Roman court, with the favor of the Most Reverend Father Darius Mattei-Gentili, Bishop of Città di Castello, or Tiferno. The Metropolitan Church of Firman, vacant due to the death of the Most Reverend Hamilcar, a Cardinal Priest of the Sacred Roman Church while he lived, the last Archbishop, who died outside the Roman court, with the favor of the Most Reverend Father Robert Papiri, Bishop of Macerata and Tolentino. The titular Archiepiscopal Church of Neo-Caesarea, vacant due to the death of the Most Reverend Peter John Joseph Soubiranne, the last Archbishop, who died outside the Roman court, with the favor of the Most Reverend Father Joseph Schirò, titular Bishop of Gadara. The Metropolitan Churches of Acheruntia and Mathara, perpetually and canonically united together, vacant due to the death of the Most Reverend Raphael de Nonno, the last Archbishop, who died outside the Roman court, with the favor of the Most Reverend Father Diomedes Falconio and the Minor Reformed Franciscans, Bishop of Lacedonia. The Cathedral Church of Senogallia, vacant due to the death of the Most Reverend Ignatius Bartoli, the last Bishop, who died outside the Roman court, with the favor of the Most Reverend Father Julius Boschi, Bishop of Tuder. The Cathedral Church of Città di Castello, or Tiferno, vacant due to the promotion of the Most Reverend Father Darius Mattei-Gentili to the See of Perugia, with the favor of the Most Reverend Father Aristides Golfieri, Bishop of Fabriano and Malhilic. The Cathedral Churches of Fabriano and Malhilic, perpetually and canonically united together, vacant due to the translation of the Most Reverend Father Aristides Golfieri to the See of Tiferno, with the favor of the Most Reverend Father Lucian Gentilucci, Bishop of Faliscoduni. The Cathedral Church of Tivoli, vacant due to the resignation of the Most Reverend Father William Maria d'Ambrogi, freely

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and spontaneously submitted in the hands of His Holiness, and accepted by the same, with the favor of the Reverend Father Peter Monti, a priest of the diocese of Albano.

[*Latin ed. p. 328*]

328 FROM the legitimate, Catholic, and honorable parents of Cynthius, born in the diocese of Albano Laziale, having surpassed the forty-second year of his age, having received the order of the priesthood and a doctoral degree in both laws, having previously been chosen by the Secretariate for the Apostolic Delegation to the Republics of Chile, Ecuador, Peru, and Bolivia, and having subsequently returned to Rome, he has resigned from the position of Superior of the Pious House of Spiritual Exercises, commonly known as "di Ponte Rotto," and from the office of Archpriest of the Collegiate Church of the Most Holy and Blessed Celestine and Julian. The Cathedral Church of Monte Falisco, vacant by translation, has been united with the churches of Fabriano and Matelica. The Reverend Father Luciani Gentilucci, with the favor of the Reverend Father Dominic Rinaldi, a priest of Rieti, has been appointed. He was born of legitimate, Catholic, and honorable parents in Rieti, and having reached the age of fifty-five, after being admitted to the Pontifical Seminary of Pius in Rome, he received the order of the priesthood there, and subsequently a doctoral degree in philosophy, sacred theology, and both laws. He has resigned from the office of Pro-Synodal Examiner, Archdeacon of the Cathedral Church, and General Pro-Vicar for spiritual matters. The Cathedral Church of Tuderlin, vacant by translation, has been united with the See of Senigallia. The Reverend Father Julius Boschi, with the favor of the Reverend Father Joseph Ridolfi, a priest of the diocese of Recanati, has been appointed. He was born of legitimate, Catholic, and honorable parents in the place commonly known as Porto Recanati, in the diocese of Recanati, and having surpassed the thirty-sixth year of his age, he received a doctoral degree in sacred theology in Rome, taught dogmatic theology to the clerics of the Salesian Institute of Laureto, and established various congregations and evening schools for young people. The Cathedral Churches of Macerata and Tolentino, perpetually and canonically united, are vacant, by the promotion of the Reverend Father Robert Papiri to the Metropolitan See of Fermo, with the favor of the Reverend Father John Baptist Ricci, a priest of the diocese of Cesena. He was born of legitimate, Catholic, and honorable parents in the place commonly known as Montemovo, in the diocese of Cesena, and having surpassed the age of fifty, having previously received a doctoral degree in sacred theology, he has resigned from the offices of Pro-Synodal Examiner and Director of the Pious Union of the Daughters of Mary. The Cathedral Churches of Civita Castellana, Ortona, and Gallesina, perpetually and canonically united, are vacant, by the death of the Reverend Father John Baptist Carnevalini, who died near the Roman Curia. The Reverend Father

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Francis, in the world Alexander Ghezzi, of the Order of the Observant Friars Minor of Saint Francis, a priest of the diocese of Tivoli, has been appointed. He was born of legitimate, Catholic, and honorable parents in Castro Madamae, in the diocese of Tivoli, and having surpassed the age of fifty-three, he resigned from the office of Guardian in the convent of his Order in that city, and from the office of Pro-Synodal Examiner and Professor of dogmatic theology in the seminary. The Cathedral Church of Marsorum is still vacant, by the promotion of the Reverend Father Henry de Dominicis to the See of Amalfi. The Reverend Father Angel Maria Aloysius was never appointed Prefect of that Church, nor did he acquire possession of that Church; with the favor of the Reverend Father Marino Russo, a priest of the archdiocese of Trani. He was born of legitimate, Catholic, and honorable parents in the territory commonly known as Margherita di Savoia, in the archdiocese of Trani, and having reached the age of fifty-three, he was appointed by the present Archbishop as President of Studies in the Seminary and General Pro-Vicar of the archdiocese of Trani. The Episcopal Church of Thelesina, or Cerretana, is vacant, by the death of the Reverend Father Aloysius Sodo, the last Bishop of that See, who died outside of Rome, with the favor of the Reverend Father Angel Michael Iannacchino, a priest of the diocese of Avellino. He was born of legitimate,

[*Latin ed. p. 329*]

From the Consistorial Acts:

Sturni, born to Catholic and honorable parents in the diocese of Avellino, having surpassed the fiftieth year of his age, having been assigned to the Society of Missionaries under the title of the Most Blessed Virgin Mary, and having served as Examiner of the Clergy and Parish Priest, left the Cathedral Church of Laquedonia vacant, due to the promotion of Reverend Father Diomedes Falconio to the Metropolitan Churches of Acerenza and Malerba, which are perpetually and canonically united, by the favor of Reverend Nicholas Zimarino. He, having been born to legitimate, Catholic, and honorable parents, and having reached the forty-eighth year of his age, relinquished his position as Canon of the Cathedral of Vasta, Penitentiary, having previously served as Examiner of the Synod, Director Spiritual of the nuns of Saint Clare and the Daughters of the Cross, and also as Pro-Vicar General. The Cathedral Church of Mutilara is vacant, due to the death of the Most Reverend Leonard Giannolti, the last Bishop, who died outside the Roman Curia, by the favor of Reverend Sanctis Mei, a priest of Cagli. He, having been born to legitimate, Catholic, and honorable parents in Cagli, and having reached the sixty-fourth year of his age, was received among the students of the Pontifical Seminary of Rome, and was awarded a doctorate in sacred theology and in both canonical laws, having served as Rector of the seminary of his homeland and as Professor of moral theology, he relinquished his position as Canon of the Cathedral Church, then

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as Archdeacon, and finally as Pro-Vicar General of the same diocese. The Cathedral Church of Cuneo is vacant, due to the translation to the See of Como. Reverend Father Theodore Ernesti Mariae, from the Counts of Bonzo, by the favor of Reverend Andrea Fiore, a priest of the archdiocese of Turin. He, having been born to legitimate, Catholic, and honorable parents in the town commonly called Casanova in the archdiocese of Turin, and having reached the forty-fifth year of his age, relinquished his position as Prior Parish Priest of the distinguished Collegiate Church of Saint Andrew the Apostle. The Cathedral Church of Aosta, in the Piedmontese province, is vacant, due to the death of the Most Reverend Joseph Marello, the last Bishop, who died outside the Roman Curia, by the favor of Reverend Father Peter Balestra, a priest of the Conventual Order of Minor Friars, of the diocese of Ventimiglia. He, having been born to legitimate, Catholic, and honorable parents in the place now called Molini di Triora in the diocese of Ventimiglia, and having surpassed the fifty-fourth year of his age, having taken solemn vows in the Conventual Order of Minor Friars, having been awarded a doctorate in sacred theology, having served as Definitor of his Order and as Provincial Superior of Ireland, and having relinquished his position as Examiner pro-Synodal in the archdiocese of Genoa, Guardian, and Parish Priest of Saint Francis of Assisi. The Cathedral Church of Drepanon is vacant, due to the death of the Most Reverend Francis Ragusa, the last Bishop, who died outside the Roman Curia, by the favor of Reverend Father Stephen Gerbino, from the noble family of Cannitello, of the Order of Saint Benedict, Congregation of Monte Cassino, a priest of Palermo. He, having been born to legitimate, Catholic, and noble parents in Palermo, and having reached the sixty-first year of his age, having taken solemn vows in the Sacred Order of Saint Benedict, having served in various offices within his Congregation. The titular Episcopal Church of Famagusta, under the Archbishop of Nicomedia, is vacant, due to the death of the Most Reverend Charles Caccia Dominioni, the last Bishop, who died outside the Roman Curia, by the favor of Reverend Father Blasius Pisani, a priest of the archdiocese of Capua: who was also appointed as Auxiliary to the Most Reverend and Reverend Lord Alphonse, of the Sacred Roman Church, with the title of Saint Mary of the People, a Cardinal Priest of Capua, and Archbishop of Capua. Reverend Father Blasius Pisani, born to legitimate, Catholic, and honorable parents.

[*Latin ed. p. 330*]

330 FROM THE CONSISTORY ACTS: In the place commonly called Serra San Bruno, in the diocese of Squillace, having surpassed the forty-fifth year of his age, having previously received a doctorate in theology and devoted to the Capuan clergy, he was appointed by His Holiness among the Domestic Prelates. The titular Archiepiscopal See of Vetren, vacant, was assigned by decree of the Title of Saint Mary of Scala, to

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the Most Reverend and Most Reverend Lord Jerome Mary of the Holy Roman Empire, Cardinal Gotti, with the favor of the Reverend Father Peter Gonzalez, in the world Charles Duval, from the diocese of Tulle. He, born of legitimate, Catholic, and orthodox parents in Tulle, and having reached the sixty-third year of his age, having devoted himself from his youth to the Order of the Friars Preachers, was sent by the Sacred Congregation for the Propagation of the Faith to Mesopotamia and Kurdistan, and as Apostolic Prefect of the Mission "Sui Iuris" of Mossul in Mesopotamia, he has now resigned. After these matters, Our Most Holy Lord made known, through His formal Brief Letters, that the following Bishops have resigned: Archbishops: of Marianopolis, Peter Richard Kenrick; of Mocissa, Othon Zardetti; of Buenos Aires, Uladislaúm Castellano; of Utrecht, Henricum Van de Wetering; of Athens, Caietanum de Angelis. Bishops: of Flavia, Eduardum Knight; of Senj, Antonium Mauro vic.; of Bruges, Gustavum Iosephum Waffelaert; of Ibarra, Fridericum Gonzalez Suarez; of Compostela, Franciscum Planearte; of Troas, Iulium Mauritium Abbet; of Memphis, Iosephum Barillari; of Adrasa, Ioannem Gallagher; of Tamas, Raymundum Rin et Cabanas; of Nilopolis, Neilum Mac Neil; of Livia, Epiphanium Scianow; of Rhithymna, Paulum Pellet; of Ascalon, Franciscum Mostyn; of Benda, Ioannem Mariam Dépierre; of Girba, Victorem Roelens; of Achanta, Iosephum Passerini; of Linoen, Paulum Mariam Ramond; of Lysias, Ioannem Petrum Alexandrum Marcon; of Metropolitan, Iosephum Claudium Excoffier; of Proconnesus, Petrum Mariam Gemet; of Thebes, Maurum Nardi; of Augustopolis, Rogerium Catizone; of Myrina, Maximilianum de Galen; of Zeugma, Ioannem Mariam Farley.

[*Latin ed. p. 331*]

531 FROM THE CONSISTORY ACTS: The Cathedral Church of Malaca is vacant, due to the promotion of Reverend Father Marcello Spinola and Maestro to the Metropolitan See of Seville, with the favor of Reverend Father John Muñoz and Herrera, Bishop of Ávila. The Metropolitan Church of Seville is vacant, due to the death of the Most Reverend Benedict, while he lived, Cardinal Sanz and Fores, the last Archbishop of that See to die outside the Roman Curia, with the favor of Reverend Father Marcello Spinola and Maestro, Bishop of Malaca. The Cathedral Church of Ávila is vacant, due to the translation of Reverend Father John Muñoz and Herrera to the See of Malaca, with the favor of Reverend Joseph Mary Blanc and Baron, a priest from Barbastro-Monzón. He was born of legitimate, Catholic, and honest parents in the city of Barbastro-Monzón, and having surpassed his fiftieth year, he had recently received the doctorate in sacred theology, and the license in both civil and canon law. He had previously been a Canon of the Metropolitan Church of Valladolid, and Provost and General Vicar of that same archdiocese, from which he has now resigned. The Metropoli-

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tan Church of Zaragoza is vacant, due to the death of the Most Reverend Francis, while he lived, Cardinal Benavides and Navarrete, the last Archbishop of that See to die outside the Roman Curia, with the favor of Reverend Father Vincent Alda and Sancho, Bishop of Oscensis. The titular Episcopal Church of Theodosiopolis, under the Archbishop of Caesarea, is vacant, due to the death of the Most Reverend Adrian Grodeski, the last Bishop of that See, who died outside the Roman Curia, with the favor of Reverend Father John Glavina, Bishop of Trieste and Iustinopolis. The Cathedral Church of Oscensis, to which the Church of Barbastro-Monzón will be united, is vacant, due to the promotion of Reverend Father Vincent Alda and Sancho to the Metropolitan See of Zaragoza, with the favor of Reverend Father Mariano Supervia and Lostalé, titular Bishop of Europus. The Cathedral Church of Popayán, in the territory of New Granada, in South America, is vacant, due to the death of the Most Reverend John Bonaventure Ortiz, the last Bishop of that See, who died outside the Roman Curia, with the favor of Reverend Father Emmanuel Joseph de Cayzedo, Bishop of Pasto. The Cathedral Church of Pasto, in the Colombian Confederation of South America, is vacant, due to the translation of Reverend Father Emmanuel Joseph de Cayzedo to the See of Popayán, with the favor of Reverend Father Ezekiel Moreno, of the Order of the Discalced Fathers of Saint Augustine, titular Bishop of Pinara and Apostolic Vicar of Casanare. The Cathedral Church of Auria is vacant, due to the death of the Most Reverend Caesarius Rodrigo, the last Bishop of that See, who died outside the Roman Curia, with the favor of Reverend Father Paschal Carrascosa and Gabbaldon, a priest of the diocese of Cuenca. He was born of legitimate, Catholic, and honest parents in the place commonly called Quintana del Rey, in the diocese of Cuenca, and having reached his forty-eighth year, he had received the doctorate in sacred theology and the license in canon law, and had attained the dignity of Archpriest in the Chapter of the Cathedral Church of Cuenca. The titular Episcopal Church of Diocaesarien, under the Archbishop of Caesarea, is vacant, due to the death of the Most Reverend Antonin Caff, the last Bishop of that See, who died outside the Roman Curia, with the favor of Reverend Father Simeon Pereira, a priest of the diocese of Nicaragua; who was also appointed as a coadjutor with succession to Reverend Father Francis Ulloa and Larrios, Bishop of Nicaragua in Central America. He was born of legitimate, Catholic, and honest parents in the city of León, in the diocese of Nicaragua, and having surpassed his thirty-second year, he serves as a professor in the diocese.

[*Latin ed. p. 332*]

332 FROM THE CONSISTORY ACTS: The seminary of Nicaragua, having been administered, the Governor of that Episcopal Curia and of the same diocese, until now, has resigned. The titular Episcopal See of Temnit, vacant under the Archbishop of Ephesus, has been filled with the favor of

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the Reverend Father Joseph Weber, a priest of the Archdiocese of Lviv. He has also been appointed as an Auxiliary Bishop to the Reverend Father Severin Morawski, Archbishop of Lviv, of the Latin rite. The titular Episcopal See of Adrianople, vacant due to the death of the Most Reverend Aloysius Gabriel of La Plata, the last Bishop, who died outside of Rome, has been filled with the favor of the Reverend Father Nicholas Casas, of the Order of Discalced Carmelites, a priest of Tarazona in Spain. He has also been appointed to the Apostolic Vicariate of Casanare in the Republic of Colombia. The Monastery of the Blessed Virgin Mary of the Sea Star, together with the annexed Priory of the Blessed Virgin Mary of Augsburg, of the Cistercian Order in Switzerland and Austria, is vacant due to the death of the Most Reverend Lawrence Wocher, the last Abbot and, respectively, Prior, who died outside of Rome, with the favor of the Reverend Father Augustine Stoeckli, a Cistercian priest of Oslo. The Cathedral Church of Bruges is vacant due to the death of the Most Reverend Peter Debrabandere, the last Bishop, who died outside of Rome, with the favor of the Reverend Doctor Gustav Joseph Waffelaert, a priest of the Diocese of Bruges. The Cathedral Church of Ibarra, in the territory of Equatorial America, is vacant due to the promotion of the Reverend Father Peter Raphael Gonzalez to the titular Archbishopric of Synnada and to the permanent Coadjutorship of Quito, with the favor of the Reverend Father Frederick Gonzalez Suarez, a priest of Quito. The Cathedral of Campeche, in the territory of Mexico, and vacant since its recent establishment, has been filled with the favor of the Reverend Father Francis Planearte, a priest of Zamora in the Diocese of Mexico. He was born of legitimate, Catholic, and honest parents in Zamora, Mexico, and, having reached the age of thirty-nine, was admitted as a student to the College of Pius Latin Americanus, and there obtained the doctorate in philosophy, theology, and canon law. He had previously served as Rector in the diocesan seminary and as parish priest of Tacubaya, and now has resigned. The titular See of Troad, vacant under the Archbishop of Cyzicus, due to the death of the Most Reverend Aloysius Marcellus Pellegrini, the last Bishop, who died outside of Rome, has been filled with the favor of the Reverend Father Julius Mauritius Abbet, a priest of the Diocese of Sion, who has also been appointed as a coadjutor to the Reverend Father Hadrian Jardinier, Bishop of Sion, with future succession. The titular See of Memphis, vacant under the Archbishop of Oxyrhynchus due to the translation of the Reverend Father John Kniaz of Kolziolsko Puzina to the See of Cracow, has been filled with the favor of the Reverend Father Joseph Barillari, a priest of the Diocese of Squillace. He has also been appointed as a coadjutor with future succession to the Reverend Father Joseph Anthony Virdia, Bishop of Cariati. The titular Episcopal See of Thebes, vacant under the Archbishop of Ptolemais due to the translation of the Reverend Father Anthony Sabatucci, formerly the Apostolic Delegate to Colombia, to the titular Archbishopric of Antinoë, has been filled with the favor of the Rev-

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erend Father Maur a Leonessa, of the Order of Friars Minor Capuchin of Saint Francis, who has expressly professed his vows. The titular Episcopal See of Proconnesus, vacant under the Archbishop of Cyzicus, has been filled with the favor of the Reverend Father Peter Mary Gentet, a priest of the Diocese of Nantes. He has also been appointed as an Auxiliary Bishop to the Reverend Father Julius Tonti, Archbishop of Port-au-Prince, in the territory of Haiti.

[*Latin ed. p. 333*]

FROM THE CONSISTORY ACTS 333. The titular church of Tamasen, under the Archbishop of Salamanca, is vacant, due to the translation to the Cathedral See of Tuy of the Reverend Father Valeriano Menendez and Conde, with the favor of the Reverend Raymond Riu and Cabanas, a priest of the diocese of Solsona, for the assumption of the Apostolic administration of the diocese of Solsona, according to the wishes of the Most Serene Catholic Queen Regent. The titular episcopal church of Augustopolitan, under the Archbishop of Synnada, is vacant, due to the death of the Most Reverend Raymond Moreno and Castañeda, the last Bishop thereof, who died outside the Roman court, with the favor of the Reverend Father Roger Catizone, a priest of the diocese of Cataca, who was also appointed as an auxiliary to the Most Reverend Bernard Anthony de Riso, Bishop of Cataca. The titular episcopal church of Myrinen, under the Archbishop of Ephesus, is vacant, due to the death of the Most Reverend Isidoro Barriga, the last Bishop thereof, who died outside the Roman court, with the favor of the Reverend Father Maximilian of the Counts of Galen, a priest of Muenster. FROM THE HOLY CONGREGATION OF THE COUNCIL OF OVIEDO, CONCERNING MARRIAGE. On June 22, 1894, Session 24, Chapter 5, concerning the reform of marriage. Damasa Gonzales Orbon and Coron of Oviedo, on March 3, 1884, in the parish church of Saint John in Oviedo, in Spain, were joined in marriage to Peter Emanuel Diaz Gorgoll, aged 21, born in Tepaste, diocese of Havana, who, while residing in Havana, granted a power of attorney to his friend, Peter Emanuel Fernandez, to contract the marriage. However, a short time later, Emmanuel, having completely forgotten Damasa, did not hesitate to marry Anne Garcia De Diaz, sister of the Syndic of the town of San Spiritus, on July 7 of the same year. As time passed, when Damasa informed Emmanuel that he intended to travel to the island of Cuba, in November 1885, he sent letters to Damasa's father from the town of San Spiritus, in which he expressed his surprise that Damasa was considering going to him, since he was not bound to him by any bond. SUMMARY OF THE FACTS.

[*Latin ed. p. 334*]

334. In Oviedo, because he had lived with his beloved wife, Lucy, in conjugal union for more than a year. Unfortunate Damasa, having been

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so shamefully deceived, and after several years had passed, learned that Emmanuel had indeed lived in marriage with the aforementioned Lucy, and was still living with her. In March of 1890, she presented a petition to the Bishop of Oviedo, requesting a solution to the marriage she had entered into with Emmanuel, or at least, that she obtain from the Supreme Pontiff a dispensation, so that her marriage would always remain valid. The ecclesiastical court of Oviedo, with due diligence and concern, initiated a process and, on March 15, 1890, and again on June 6, sent letters to the Ordinary of Havana, urging him to summon Emmanuel to appear in court to testify regarding the marriage contracted with Damasa. Emmanuel obeyed the mandates of the court of Havana and answered the questions put to him under oath, asserting among other things that he had revoked the mandate for the marriage at an opportune time. The Bishop of Oviedo, to whom Emmanuel's answers were sent, along with the testimonies of two witnesses from Oviedo, who swore that after her marriage to Damasa, she had never left Oviedo, nor had Emmanuel ever come to Spain, sent these to the Sacred Congregation. Upon receiving these, the Sacred Congregation wrote to the same Bishop of Oviedo on December 15, 1891, instructing him to ensure that the process "be carried out both regarding the asserted nullity due to the revocation of the mandate, as well as regarding the lack of consummation due to the constraint of time (that is, the absence of any meeting between the betrothed), proven by witnesses of both sides to be summoned, with the faculty of also delegating someone to examine the parties and witnesses who reside outside of his diocese." The Bishop of Oviedo, on October 5, 1892, wrote again to the Sacred Congregation, reporting that he had received no response from the Ordinary of Havana, and indeed, he asserted that, due to Emmanuel's flight and his opposition to the canonical process, it was impossible to summon witnesses from his side. Then, the Sacred Congregation, on November 26 of the same year,

[*Latin ed. p. 335*]

OVETENE 355: The Bishop of Ovetene was instructed to proceed as follows: "Leaving aside the question of the nullity of the marriage due to the revocation of the mandate, if this matter cannot be prudently and usefully addressed, the process should proceed according to the Constitution *Dei miseratione* and the Instruction of the Sacred Congregation of the year 1840, in order to demonstrate that the betrothed parties never agreed together. To this end, first, the plaintiff will be examined; then, several, and if possible, seven witnesses proposed by her will be questioned, to determine whether this woman is worthy of belief, and whether she truly did not leave Ovetene from March 3, 1884, or at least did not set sail for America. At the same time, the examination of Emmanuel Diaz and the witnesses presented by him will be entrusted to the Havana Tribunal, so that, in turn, it may be established that Emmanuel did not leave the island of Havana

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from March 3, 1884, or at least did not come to Europe. If the defendant, even after the inquiry into the revocation of the mandate has been omitted, refuses to appear before the judge and present witnesses, the judge will be instructed to summon several witnesses among the relatives and friends of said Emmanuel, and to examine them. Once all of this has been completed, all the documents will be sent to the Sacred Congregation." After everything was completed, the Sacred Congregation, considering the poverty of the plaintiff, decided that the case should be treated economically. For the sake of clarity, the theologian proposes to resolve the following three questions: 1. Whether such a marriage was valid; 2. If valid, whether it remains valid; and 3. Finally, if either is the case, whether there are just grounds for a solution. Regarding Question 1: Proceeding step by step. Namely, whether the marriage of Emmanuel Diaz Gorgoll with Damasa Gonzalez Orb on and Coro, entered into through a procurator on March 3, 1884, was valid, he answers affirmatively, or at least that there is nothing to prove its invalidity. And to demonstrate this, he notes that: "Marriage can certainly be validly contracted through a procurator, as was the case before the Council of Trent, like other contracts, according to the last canon of the chapter on Procurators, in section 6. However, it is the common opinion of theologians that this right still exists."

[*Latin ed. p. 336*]

It is maintained that, after the Council of Trent, if the conditions demanded by Boniface VIII are observed, [a marriage by procuration] remains valid. Indeed, the Council of Trent did not change anything in this matter; and the practice of the Church sometimes permits marriage by procuration in the Tridentine form. Therefore, such a marriage is valid, although it is rarely permitted, with certain precautions taken to ensure its lawfulness. That marriage by procuration is valid, even after the Council of Trent, provided other conditions are met, is demonstrated by the authority of Cardinal De Luca, who in his *Tractatus de Matrimonio*, Book XIV, Chapters 22 and 23, states: "Among those who are absent, just as in the case of other contracts, and according to their general rules, such agreements are not forbidden to be concluded, either through mandataries, or in any other way. And with this special condition in force, that before the joining of consents, the essential elements are perfected, the consent already given, or the mandate given, may be revoked, without regard to the irrevocability of the mandate, which is given in profane, indifferent contracts, nor excluding the religious oath which induces this irrevocability, or the faculty of free repentance." Concerning the conditions for the validity of such a marriage, as prescribed by Boniface VIII, three are enumerated: Firstly, there must be a special mandate, given to the procurator, for the contracting of the marriage; therefore, the procuration must be made for a certain and definite person, in order to contract with a certain and definite

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person, as is well expressed in chapter 6 of the aforementioned section on Procurations. Although, strictly speaking, this mandate should not be given in writing by the mandator, the Bishop may, for greater security, permit it to be expressed in writing. Secondly, the procurator must execute the mandate himself, and he may not delegate another, unless the faculty to delegate has been expressly given to him. In this case, if the marriage celebration is performed in the Tridentine form, the procurator, in the act of the marriage, presents the mandate, and the priest asks: "Do you, Sempronia, take Titus as your husband?" "Do you, Titus, take Sempronia as your wife, through your present procurator?" Thirdly, the mandate must not have been revoked.

[*Latin ed. p. 337*]

Oveten, 337, states tacitly, and not expressly, in chapter 6 concerning Procurators, that even if nothing is known to the procurator, the revocation of the mandate can still be proven in an external forum. In other acts, the revocation is not valid unless it is known to the procurator, according to the *Juris Regales*. However, this does not apply to marriage, according to chapter 33 concerning Rescripts, and Clementine decrees concerning Renunciations. The reason for this difference is clear: in other acts, the law supplements consent; but in the case of marriage, consent cannot be supplemented by any authority. The practice of the Church and the Sacred Congregation, in the case of the marriage in Eugubina or Perusina, dated July 5, 1727, demonstrates the same, namely, that it is not necessary for the revocation to be known to the procurator. Furthermore, it is beyond doubt that the Church recognizes that marriage can be validly contracted through a procurator, so that Ursaya, volume 1, page 2, in Disputation XVII, sections 1-2, could already state: "It is well known in law that marriage can be contracted through a procurator, both on the part of the man and on the part of the woman, provided that a special procurator is appointed to contract the marriage with such a person, as has been done in the present case, according to the text expressly stated in chapter 6 concerning Procurators, in Sánchez, *De Matrimonio*, I, 2, disputation 11, question 1, number 2, and question 2, number 10; and the Sacred Rota, in the Neapolitan marriage case of June 18, 1703, §, decided in the presence of Ansaldo, and the Sacred Congregation decided in another Neapolitan marriage case of July 18, 1711. Finally, according to Theologus, the precautions to be taken for the lawfulness of the matter are: a) a very serious reason must be explained to the Ordinary by the parish priest, who should never assist in such marriages without consulting the Ordinary; b) those who are joined in marriage through a procurator should either renew their consent before the parish priest and witnesses, or at least declare before the Church that they consider the marriage to be valid. Furthermore, it is stated that, in the case of the marriage of Emmanuel Diaz Gorgoll with Damasa Gon-

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zalez Orbon, a special mandate was given to a specific person, namely the ecclesiastical procurator, namely, Don Peter Emmanuel Fernandez and Suarez; and that 2° a special mandate was given by Fernandez himself to the aforementioned Damasa. (References to Acta, Volume XXVIII, folio OCCXXX. 22).

[*Latin ed. p. 338*]

338. "In Ovetensis, the marriage was consummated on March 3, 1884, as evidenced by the declaration of D. Corbasal, the parish priest of St. John in Ovetensis, which I will soon relate, and to which I attest. Furthermore, there is a third condition: namely, that the mandate was not revoked; whatever Emmanuel Diaz may say to the contrary. For, at the beginning of the marriage, which he himself desired at that time, on January 2, 1885, writing to Damasa, he used words that still indicate that he considered himself a lover and a betrothed. He fled out of fear of imprisonment, although later, certain of his own safety, he confessed to a procurator, and afterwards affirmed that he had revoked the mandate, so that no sane person would be compelled to give credence to his affirmation. A second argument is the declaration of the same Bishop of Ovetensis, who wrote this to the Sacred Congregation: "For it is easily deduced from this that the marriage contracted with Damasa was valid, first, because it shows the bad faith of Emmanuel Diaz in the declarations he made, second, because he fled from the action of justice, and finally, because it seems impossible that, after seven years had elapsed since the mandate was granted, he would not remember having revoked it before, especially since he could know that a criminal process would necessarily arise from his actions." 3. [The witnesses, who are subsequently brought forward, all agree on this matter, and all either explicitly affirm or imply that such a marriage is valid. Regarding question 2: Whether it can be established that this marriage was not consummated, or whether it remains merely valid. The affirmative answer is given based on the following reasons: For, as it most clearly appears from the depositions of both Emmanuel Diaz and of several witnesses, who were examined by the Tribunal of Havana, by order of the Sacred Congregation, Emmanuel Diaz, whether from the island of Havana or from America, never left. The Tribunal of Ovetensis also proved this, not only by examining the woman herself and seven witnesses who testified that she had never left Ovetensis, nor had she traveled to America, but also by additional examination..."

[*Latin ed. p. 339*]

OVIEDO. 339. Certain friends of Emmanuel Diaz, residing in Oviedo, state that Emmanuel never returned to Europe after that date. Therefore, since an examination of the duly prepared proceedings in both the Oviedo and Havana tribunals establishes that Emmanuel Diaz and Damasa Gon-

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zalez never met after the marriage, through the procurator of the contract, it follows that the marriage was never consummated and remains valid. What is derived from the immediate examination of the proceedings is confirmed by the sentence of the Bishop of Oviedo, who, in his most holy letter dated October 5, 1892, states: "It is certain that 1. Emmanuel Diaz Gorgoll lived in the diocese of Havana after September 1883, where he remained constantly, not making any journey to Spain... 2. It is publicly and notoriously known to the neighbors of Damasa, who lament her situation, and it is a matter of common knowledge that Emmanuel has not lived here since September 1883. 3. It has been proven that Damasa has always resided in this diocese and has not left this city at any time since the marriage contract." Therefore, based on the records, which have been recognized as duly completed, he rightly concludes: "Regarding Damasa, as stated in this exposition, witnesses were presented who testified to the truth: her father, under oath, declared that the marriage was never consummated, and all, as has been ascertained, whether neighbors or not, attest that the marriage was only valid." The same is repeated in a letter addressed to His Most Holy Father Leo, dated April 28, 1893. It would not be helpful to object that Emmanuel's assertion that he did not return to Europe after March 3, 1884, should not be given credence, since he is not to be believed, given the doubtful faith in his assertion regarding the renewal of the mandate. Indeed, this offense is addressed by noting that the Sacred Congregation, based on the report of the Bishop of Oviedo, suspects that Emmanuel was reluctant to appear before the judge and present witnesses, and therefore orders that the Havana tribunal summon some of Emmanuel's relatives and friends, and, with due regard for the laws to be observed, question them. Therefore, even without Emmanuel's assertion, the fact in question can be established.

[*Latin ed. p. 340*]

340 OVIEDO. He himself returned to Europe on May 3, 1884. - 2. This fact, being entirely visible and requiring several days to occur, could not remain hidden, especially from parents, friends, and acquaintances. Indeed, both those in Oviedo and those in Havana unanimously deny that he returned to Europe. - 3. It cannot be assumed that someone who has been deceitful once will always be deceitful, since not all reasons coincide in both instances. Regarding the revocation of the mandate, it is alleged that he lied: and the reason for the lie is given by the Bishop of Oviedo. Emmanuel Diaz received instructions regarding the process and fled to avoid giving testimony, because he has a well-founded fear that the process will condemn him and that he will be imprisoned. One must marvel that, to avoid such a misfortune, Emmanuel once denied having given the mandate to the procurator, or affirmed its revocation. This misfortune, or a similar one, would not be feared if he were to swear, in the episcopal court, that he never

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returned to Oviedo or to Europe. Concerning the grounds for nullity of marriage, which a theologian argues are present in abundance and are very serious, in order to discuss the reasons for which the Roman Pontiff often grants a dispensation from a marriage that is valid but not consummated, namely: 1. Emmanuel had an aversion towards Damasa, for which reason he himself would never have tolerated living with Damasa, and this is clearly demonstrated by a letter from him to the Parish of San Spiritu, dated December 21, 1885. 2. There was a doubt about the validity of the marriage between Emmanuel and Damasa, initiated by Emmanuel through a procurator, and this doubt was removed not only by Emmanuel himself, who, under oath before the ecclesiastical judge, testified that he had revoked the mandate to the procurator, but also by seven witnesses summoned by the Bishop of Oviedo, who affirmed that Emmanuel Diaz lived in Oviedo, led a virtuous life, and was truthful; similarly, witnesses examined by the court of Havana also assert that he was worthy of belief. Therefore, unless he is considered a hardened criminal, a sacrilegious person, and a perjurer, which, according to the records, he does not yet appear to be, some doubt about the validity of the marriage will always remain. 3. Moral impos-

[*Latin ed. p. 341*]

Oveten. 341: The possibility of dissolving the marriage of Emmanuel, who has maintained conjugal relations for nine years, as if with his wife, as is believed by all, and which, due to enmities, hatreds, and scandals arising from this and that, will be a source of great scandal, is evident. Furthermore, it is clear that Emmanuel is prepared to flee, rather than to lead Damasa, his wife, to his homeland. Who does not see the future scandal that will follow after Anne has decreed the dissolution and separation, when it is easily seen that he could remain with her? Indeed, all the Reverend Fathers commonly admit that there is a just cause for granting a dispensation, either for one of the following: 1. the incompatibility of the spouses, so that there is no hope of future reconciliation; 2. the probable fear of a great future scandal, of discord and quarrels among relatives; 3. the partial proof of a lack of consent, or some other impediment. Cf. *Conscientia De separatione tori*, III, II, n. 96 seqq. Sánchez *De matrim.* I. I, XVI. Schmalzgrueber *in Decretal.* I. IV, tit. XIX, n. 53 seqq. *De Iustis De dispensat. matrim.*, n. 53 seq. 4. Another marriage, even if not consummated, or a civil marriage entered into by Emmanuel with Anne, from which he cannot be freed. Cf. *De Iustis*, loc. cit., n. 32. The marriage between Emmanuel Diaz and Anne Garciam, the sister of the syndic, celebrated both before the Church and before the secular magistrate, is at least civil, and has existed for many years, and it is clear that Emmanuel cannot be freed from it without scandal and with very grave harm. And for this reason alone, the dissolution of the marriage has been repeatedly sought from the Holy See by the Roman Pontiff. 5. Also, the unfortunate condition

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of Damasa, which should move every heart to seek from the Roman Pontiff a dispensation for the dissolution of the marriage, lest this young and poor woman be exposed to countless and very grave dangers in this our age, remaining in the state of forced widowhood. Since it is certainly established that the aforementioned marriage is not consummated, and the reasons given appear to be just, therefore...

[*Latin ed. p. 342*]

342 OVIEDO. The theologian concludes that, since the Bishop of Oviedo has repeatedly and urgently requested a solution to the marriage issue, it is necessary to consult with the Most Holy [Father] regarding whether the marriage, which is currently considered valid between Emmanuel Diaz Gorgoll and Damasa Gonzalez Orbon, and which was initiated through a procurator, should be dissolved through a dispensation. OPINION OF THE CANONIST. The canonist states that, since the Holy Congregation only desires to know whether Emmanuel ever came to Europe, in order to obtain a morally certain argument regarding the consummation or non-consummation of the marriage, it seems superfluous today to inquire whether the marriage was validly or invalidly initiated, since it is sufficient to petition the Most Holy [Father] for a dispensation from the marriage, if there are sufficient reasons to prove that it remains valid. However, the question presented to me is not so limited, and in order for it to proceed properly, two things must be discussed: a) Was the marriage between Emmanuel and Damasa valid? b) And if it was valid, was it consummated? The marriage between Emmanuel and Damasa was valid. In order to prove this, it is necessary to recall the words of Chapter [last], concerning Procurements, in Book VI, which read as follows: "A procurator is considered suitable for contracting a marriage only if he has a special mandate for this purpose... If the procurator, before contracting the marriage, is revoked by his master, the contract afterwards does not constitute a marriage by the same person, (even if both he and the person with whom he contracted the marriage are completely unaware of such a revocation), and has no validity, since it lacked the consent without which it could not have any strength." Given these principles of law, it is evident that among the many affairs that require a special mandate, the matrimonial contract holds the highest place, since it is considered among the most important affairs, as it creates a perpetual obligation, which is a matter of great importance. Therefore, a general mandate is not sufficient, even for a university of causes, but a special mandate is required, namely one specifically for the purpose of contracting. And indeed, not with just anyone, but with a specific and designated person by the master himself.

[*Latin ed. p. 343*]

OVETEN. 343, commanding. And indeed, it is just, for it is not indifferent

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to enter into a marriage contract with either Gaia or Sempronia. This is entirely in accordance with the disposition of civil law. A general mandate to seek a husband for a daughter of the family does not constitute a marriage of reason; rather, the person of the daughter must be presented to the father who consents to the marriage, so that the marriage can be contracted. As De Angelis states in book 1, title XXXVIII: "These things are necessary to preserve the freedom of marriage, which produces an indissoluble bond, from which it is not permissible to recoil, according to divine law, for God has joined what man must not separate." But when a procurator assumes the person he represents and contracts an obligation in his name, it is absolutely necessary that the mandate be granted without any impediment, so that what is done through another is truly and properly said to be done by himself; for he who performs the duties of a procurator voluntarily accepts the burden; no one is forced to accept a procuratorship. Now, if we consider the appearance of the facts, all the requirements of the law are present. A special mandate exists, namely, to contract marriage with a specific person, namely, Damasa, as is evident from the public document drawn up by the public scribe. Diaz was not, at that time, deprived of legal capacity, nor was he lacking the essential freedom required, so that he could not delegate to another. He adds this, noting that in a letter dated December 21, 1886, Emmanuel claimed that the mandate to marry had been extorted from him, and that he could not consider it valid today, since the consent of the parents was lacking. These words are superfluous and mean nothing. First, because the public scribe drew up a public document, expressing in words the true and proper consent. He does not speak of the illegality of the mandate, but on the contrary. When Emmanuel claims that the consent of the parents was lacking, he is openly lying. Indeed, a public document was drawn up in Havana, in which the father of the same gave his full consent to this marriage, and stated that he had no objection. Finally, he claims that the mandate was extorted from him, and this assertion is groundless.

[*Latin ed. p. 344*]

344. Oveten. The ease with which this matter is presented undermines its credibility. For a witness, without stating the reason, does not prove anything. I. The sole codex on witnesses states that a marriage duly celebrated is evidenced by the parish register, in which it is recorded that it began on March 3, 1884, through a procurator, because the contracting party was absent. To this, Oveten adds that the matter is well known. All those summoned to testify about it unanimously confess the absence of Emmanuel at the time of the celebration, and therefore, through a procurator, and they speak with such certainty that it is as if it were a matter of evident fact. Therefore, the matter must be considered settled. However, he adds that in the aforementioned chapter of the Decretals, in the sixth canon, it is stated that the revocation of a mandate does not invalidate the

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act of the procurator, even if the revocation was made, provided that the procurator and the party to whom the reason is given were unaware of it, since without their consent, it could not have validity. In inquiring about the manner in which a revocation must be made in order to declare the marriage invalid, he believes that it is not necessary that the revocation be made in the same manner and with the same form as the mandate was granted. Indeed, the chapter concerning procurators explains the nature and character of the mandate, and also speaks of its validity, its perseverance, and its revocation, but it remains silent about the manner in which the revocation of the mandate must be carried out. Therefore, it will suffice that it has been revoked, and that this can be proven in the external forum. From this, he readily agrees with the following observation of Coninck, which he considers to be very true. In the forum of conscience, a mere mental revocation is sufficient, because this completely removes consent. However, for the external forum, it is necessary that the revocation be proven to have been made before the marriage was contracted. However, an implied revocation is sufficient (as when the mandating party contracts marriage with another), and this can also be proven in the external forum. Disp. 24, dub. I X, n. 69. The Salmanticenses agree that such a revocation is sufficient, provided that it is done mentally, for the forum of conscience, although in the external forum, it will not be considered revoked unless there is proof of the revocation. It is also sufficient if the revocation is made by letter, by word, or even by the very act itself, because it is not only by words, but also by deeds.

[*Latin ed. p. 345*]

Oveten, 345, demonstrates the contrary will. Tractate IX, Part IV, paragraph 100. Nor does Sánchez disagree; indeed, he confirms this in book 2, disputation 11, paragraph 20. Emmanuel, however, affirms by oath that he retracted the mandate, and if this were proven, it would be in vain to inquire whether the marriage contracted with Damasa is to be considered valid. But we cannot expect confirming arguments from the same person. As long as he could, he denied that he had given any mandate to contract marriage. Later, convicted by a written document, and not knowing how to defend himself, he was forced to invoke the possibility of revocation, stating nothing other than that he had done so at the opportune time. Therefore, no argument arises by which the revocation of the mandate can truly be said to have been made by Emmanuel, and can be proven in an external forum. Only one thing occurs in this case: a perpetual contradiction. For Emmanuel first denies, then, when convicted, affirms, restricts, and expands, so that it cannot be safely affirmed what his true opinion is in this matter. Furthermore, if a witness is true in part and false in part, he is considered entirely false. 1. How much more so, then, one who is found to be false in everything, and who, having been convicted of feigning ignorance,

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states that he retracted the mandate, without being able to judge how. Does he deserve credence, who behaves in this manner when giving testimony, confirmed by oath? Perhaps someone will say, "No," and not without reason: according to Oonink, Sánchez, and the theologians of Salamanca, an implied revocation is sufficient, which is also verified in betrothals already begun. But Emmanuel contracted a marriage with another: therefore, an implied revocation occurs, which could not be greater. However, according to the Canonist, this difficulty is entirely empty, and in no way destroys the thesis of the validity of the marriage. For a second marriage, personally contracted, to prejudice a prior mandate, it must precede the execution of the mandate. In that case, the mandate ceases, and is considered implicitly revoked. On the contrary, if the execution of the mandate precedes, the second marriage does not prejudice the first, which remains in its full force. Indeed, the mandate to contract marriage, given to the procurator, had its execution on March 3, 1884, while the marriage contracted by Emmanuel in the city of Havana was on July 1st of the same year.

[*Latin ed. p. 346*]

346 Ovetensis. In the year, Emmanuel Diaz was already subject to an impediment to marriage, and the mandate had fulfilled its purpose, and could not be revoked by a contrary act, but only by a subsequent reason of time. Therefore, since Emmanuel Diaz cannot in any way prove that the mandate to contract marriage was revoked by himself, the marriage contracted with Damasa, under her own name, remains valid in the external forum. After these matters, turning to another question, which concerns consummation, it is warned that, in order to grant a solution regarding the marriage, it is necessary to proceed simply by reason, and to complete the process according to the prescriptions of Benedict XIV in the Bull *Dei miseratione* and the most recent Decrees of the Holy Congregation of Councils. However, more is required here, and the process is imperfect. Nevertheless, it is considered possible to acquiesce in what has been related in the records, since from what is related in the records, the most certain arguments are deduced that the marriage remained only valid. The Ovetensis court called upon trustworthy advocates and witnesses, and took care to respond, as much as possible, to the prescriptions laid down to avoid all errors in a matter of such importance, as is the solution of a marriage. If it did not compel other witnesses, it is because Emmanuel Diaz, having been summoned to court, did not respond. The Habanensi court, however, while stating that the marriage initiated by his procurator was null, due to the revocation of the mandate, considered the cause brought by Damasa to be extraneous to itself. Since the matter stands thus, this second thesis is proven by the following arguments. And in order to proceed clearly, following the track of the witnesses, it states a) that there was no consummation of the marriage, b) indeed, that it could not have occurred. When dealing with

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a matter of fact, it says that only positive arguments must be presented. If Emmanuel and Damasa had at any time begun a common life, at least the presumption of subsequent copulation would be dispelled by morally certain arguments, which are not always available: but here, a different procedure is required, and it suffices to inquire whether they ever lived together, and led a conjugal life. However,

[*Latin ed. p. 347*]

OVETO. 347. It is entirely certain that the marriage did not take place. Indeed, Emmanuel Diaz entrusted the task of contracting the marriage in his name to Peter Fernandez, because he was unable to be present. Before the marriage could be celebrated, he traveled to the Island of Cuba, by reason of his office. All are in agreement on this: the bridegroom, the witnesses, the parish priest, and the Ovetensis Curia, which permitted the marriage to be celebrated in this manner. Now, if Diaz was absent, he never lived with his wife, no one ever had dealings with her, and indeed, it was impossible for anyone to do so. This is inferred from the very impossibility that existed regarding Emmanuel and Damasa consummating the marriage. This argument, confirmed by the testimonies of witnesses, most strongly proves the lack of consummation of the marriage. For if an inference from possibility to actuality is not valid, much less is one from impossibility. Furthermore, Emmanuel never came to Europe, and Damasa never traveled to Cuba. Both of these are easily proven. For Emmanuel, before entering into marriage, left Ovetum. Only once did he express to his father in a letter his desire to return to Ovetum, but under the condition of finding a better fortune, since he was held back by poverty while engaged in his office and duties in Havana. However, since that condition could not be fulfilled, he had to say farewell to his desire to return. There was no opportunity for him to leave and return to Ovetum, since he could not hope for a better fortune without his office. Therefore, he changed his plans and never left Havana. Furthermore, there are witnesses, numerous in number and without exception, who attest that Emmanuel did not fulfill his desire to return to Ovetum, which he conceived at a moment of sadness, when misfortune weighed upon him, and their testimonies provide certainty that cannot be greater. Damasa, who, according to the testimony of the Bishop of Ovetensis, is well-behaved, endowed with virtues, and therefore incapable of telling a lie, without hesitation, but seriously affirms that from the day that Emmanuel left the diocese of Ovetensis, "she has not seen him, nor has she had the opportunity to see him, much less to converse" with him.

[*Latin ed. p. 348*]

348. Furthermore, the father Damasae testifies, who could not have been ignorant of Emmanuel's departure, as is evident from his own

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words, which state that no mandate for execution was given. 1. Joseph Cabal y Alvarez confirms this: "From that time (that is, when Emmanuel departed), I have not seen him again, and I am persuaded that he has not returned to this city." 2. He gives a reason for his affirmation, because he was bound by a bond of friendship with the family of Emmanuel, whose departure he could not have been unaware of. Similar statements are repeated by Baldomerus Olay y Faujal, Urbanus Olay y Faujal, and other witnesses. If it is certainly known that Emmanuel did not come to Europe, it is all the more certain that Damasa did not go to Havana. She herself also conceived the desire to go there, in order to remain with her husband and to live a marital life with him. This is evident from a letter from Emmanuel to his father, Damasae. Fearing Damasae's arrival, she dissuades her from this journey with these words: "I must tell you that I do not know the reason why the soul of [someone] would want to come with me, since there are no bonds that unite me to her, which would justify our union." The canonist believes that Emmanuel said this, not because he firmly believed that Damasae would go to Havana, but in order to prevent it and to dispel any suspicion from himself. Whatever the case may be, this letter, which Damasae certainly acknowledged, had the effect of changing her intention to go there, if she had one. Therefore, according to the testimony of the father, "she has never been in this city." Given the known reluctance of Emmanuel, whose intention was to break off all friendship with her if she were present, or not to acknowledge her, there was certainly no reason that would have compelled her to undertake this journey. Therefore, the father Damasae confidently affirms, "she has never been in this city." These words, as clearly shown by the testimony, are repeated by other witnesses, on the part of Damasae. From all of this, it becomes evident that the consummation of the marriage was impossible. The witnesses themselves acknowledge that this consequence flows spontaneously from their own sworn testimony, and they also speak of this impossibility of the consummation.

[*Latin ed. p. 349*]

OVETO. 349 Having considered all these matters concerning the merits of the case, the canonist concludes, stating that although the proceedings were imperfect, nevertheless, the marriage has remained valid, as arguments both undeniable and efficacious prove. The proceedings are incomplete, since on the part of Emmanuel Diaz, witnesses of the seventh hand are lacking, and a defender of the matrimonial bond is desired, who, according to the Constitution of Pope Benedict XIV, is entirely necessary, and is considered the most important part in the judgment concerning the validity or invalidity of the marriage, and its dissolution, when it is deemed to have been valid. Therefore, regarding these matters, a petition must be made, and Damasa does not expect this in vain, and hopes to obtain the

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indulgence of the Pontiff, either because the Congregation, through a letter from the Secretary, desired to know from the Bishop of Havana, whether Emmanuel had come to Europe, and to Spain, to see Damasa (which she confidently affirms has not happened), or because it is impossible today to repeat the proceedings and to absolve her according to the laws, since Diaz, a man of stubborn character, refuses to acknowledge the marriage he entered into, claiming that he withdrew from the obligation to marry at a suitable time. Given the aforementioned deficiencies in the proceedings, he firmly believes that a petition should be made to the Most Holy Father for a dispensation from the valid marriage. Damasa, who has been shamefully deceived by an unscrupulous man, implores the indulgence of the Pontiff, so that she may be absolved from the bond validly contracted. Her situation, indeed, is not a good one. And as the Bishop of Oveto writes about her, "she is not married, nor is she a virgin; it is necessary that this state be regulated." Since the marriage contracted with Emmanuel is certainly valid, she would, of course, be bound to him, but Diaz rejects her, and insists that the marriage was invalidly entered into. But what if, repenting of his actions, Damasa were to accept him as her husband? Even in that case, she does not believe that Damasa should be compelled. With what pleasure would she do so if she were forced? We are dealing with a man who, in the same year, and with the same words, did not hesitate to pledge his fidelity to two women. Damasa, therefore, has reason to fear, that the trust given with such ease to Emmanuel—

[*Latin ed. p. 350*]

350 OVIEDO. It is necessary to consider the possibility of a rupture [of the marriage]. The letters of Emmanuel clearly demonstrate this. While he was writing letters full of affection to Damasa, he had already betrothed himself to another woman, or at least he was already inclined towards that. These facts suggest that Damasa is not only of a light spirit, but also fickle. As long as fortune favored him, Damasa did not remember [his previous betrothal]; indeed, he completely severed all relations with her, but when he suffered misfortune and was burdened by poverty, he desired to restore friendship with her, as can be seen from the letters to Anthony, Damasa's father. This fickleness and the change in Emmanuel, according to circumstances and time, teach Damasa that he is a man of bad faith, and that he will fulfill his promises only if it suits him, and not otherwise if utility dictates.

OBSERVATIONS OF SAINT VINCENT, DEFENDER OF THE SACRAMENT. The defender of the sacrament of marriage observes, first of all, that it is entirely superfluous to speak of the nullity of the marriage, when even the most learned theologians and canonists without ambiguity acknowledge the value of marriage: but rather, he strives to demonstrate that, in the present case, there is no proof of its invalidity, considering the following.

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Two things must be demonstrated from the opposite point of view: firstly, that Damasa has not yet left Oviedo for the island of Cuba, and secondly, that Emmanuel has not departed from the island of Oviedo. As long as either of these two conditions remains uncertain, the invalidity of the marriage cannot be certain. Indeed, neither of these has been ascertained. He does not hesitate to say that there are more witnesses available who, whether one or the other, or even both, affirm it. But, he says, their testimony cannot be held in high regard, not only because the witnesses do not give a sufficient reason for what they say: but also because, when they affirm that Damasa has not left Oviedo, or that Emmanuel has not left the city of San Esteban de Gormaz, the witnesses either speak of a departure for a long time, and therefore sing outside the choir, or manifestly deviate from the truth. In reality, three witnesses, that is, Joachim Perez y Ureta,

[*Latin ed. p. 351*]

OVIEDO. 351 Joseph Vidal Valdivia and Garcia, and Leontius Zamora and Peralta, residing in the aforementioned city, commonly known as San Espíritu, assert that Emmanuel did not leave the island, nor the town of San Espíritu, but rather, "was employed at that time (from the month of December 1883) in the Royal finances." However, it is evident that these witnesses are deviating from the truth. It is indeed certain that Emmanuel left the town of San Espíritu and his public duties in the year 1886. Furthermore, Emmanuel himself, in a letter to his father Damasae, written at a time when no suspicion existed, mentions this very fact. Moreover, in another letter to the same Damasae, dated "Avana, May 1, 1886," he repeatedly affirms his desire to return to Oviedo, as he had previously stated. From this, it is clear that the story concerning the marriage initiated by Emmanuel on July 7, 1884, with Anne Garcia Re Diaz, sister of the Syndic of San Espíritu, is also fabricated. For, if he had been married to the sister of the Syndic of San Espíritu in 1884, he would not have been wandering about the island in 1886, seeking bread and sustenance in Spain from his father Damasae. But a greater matter is at stake: on January 11, 1885, Emmanuel wrote to Damasae himself, stating that he would travel to Oviedo in April or May to see her. However, it is asserted that Emmanuel had indeed been in Oviedo and had stayed for three months in the house of his sister in Bonaferrada, in the province of León; that is, at the very time when Emmanuel, as evidenced by the foregoing, was eager to be united with Damasae. Therefore, the question arises: where was Damasae during those three months? It is unreasonable to disregard Damasae when she claims to have been staying in the house of her sister in Bonaferrada, since she provides no proof of this. Moreover, was this sister not subjected to examination? Is it possible that the author is suggesting that Emmanuel and Damasae did not meet together, either in the province of León or in other parts of Spain or the

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Cuban island, for at least three months?

[*Latin ed. p. 352*]

352. Furthermore, it does not follow that faith must be given to the witnesses presented by Damasa, who with one voice swear: that Damasa, from the very moment in which the marriage was contracted, on the 3rd of March, 1884, through a procurator, was never absent from Oveto. Given these facts, the following points were to be discussed:

Question I. Whether it can be established that the marriage is null due to the revocation of the mandate in this case. And, if so, negatively:

Question II. Whether it is necessary to consult with the Most Holy [Father] for a dispensation from a marriage that is valid but not consummated in this case.

RESOLUTION. The Sacred Congregation of the Council, after mature deliberation, decided on June 22, 1894, to respond as follows:

With prior approval of the acts:

To Question I: Negatively.

To Question II: Affirmatively.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. A marriage contracted through a procurator, both before the Council of Trent and after the promulgation of said Council, can validly be contracted, provided that the conditions prescribed in the last chapter concerning the procurator are observed.

II. These conditions are: a) that a special or determinate mandate be given to a specific person to contract marriage, not with any person, but with a person who is determined and specified by the one giving the mandate; b) that, just as the mandate to grant a delegation must not be hindered in any way, so the procurator must voluntarily accept the office offered to him; c) that the procurator must execute the mandate himself, and may not delegate it, unless such authority has been expressly given to him; d) that the mandate must not have been revoked before the celebration of the marriage, neither explicitly, which revocation is sufficient in the forum of conscience, nor implicitly (e.g., if the one giving the mandate contracts marriage with another), which is valid even in the external forum if it can be proven. And the revocation is valid even if it is unknown to the procurator and to the party to be married.

III. Therefore, it is not necessary that the revocation be made in the same manner, and with the same reason, as the mandate was granted.

[*Latin ed. p. 353*]

O. 353: This is sufficient, provided that it has been revoked, and this can

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be proven in the external forum.

V. In the case concerning the validity of a marriage, where Damasa was contracted to by Emmanuel through a procurator, it was decided that, because the express revocation presented by Emmanuel was not proven, the implied revocation, which occurred when he himself contracted marriage with Anne, took effect, when the marriage with Damasa had already been celebrated.

V. However, the dispensation, requested by Damasa, was granted, because it appeared from the records that the marriage had not been consummated, and indeed, could not have been consummated; and that there were very serious reasons that suggested such a dispensation.

BURDEAUX. NULLITY OF MARRIAGE. June 25, 1895. Session 24, chapter 37, concerning reforms.

SUMMARY OF THE FACTS. Mauritius, engaged in business with his father in the city of Burdigala, frequently visited the home of Gregory, also of that city, who was also engaged in commerce. On one such occasion, Mauritius met Josephine, the daughter of George, and, captivated by her singular beauty, and enticed by the prospect of a substantial dowry and the flattery of Josephine's parents, he decided to marry her as soon as possible. Therefore, on January 12, 1886, after a previous civil marriage agreement, Mauritius and Josephine, both being 21 years old, entered into a legitimate marriage, according to the prescriptions of Trent, in the parish church of Notre Dame in the city of Burdigala. If we are to believe the account of Mauritius, the unfortunate end of this marriage was foreseen by him even before the celebration; for he asserts that, before the wedding, he was treated with indifference.

[*Latin ed. p. 354*]

354 BORDEAUX. He had treated her with indifference and had always shown signs of unhappiness in his presence. This indifference increased on the very day of the marriage, for the woman declared to the bridegroom that she had submitted to the will of her parents and that she harbored affection for another. Therefore, it is reported by Mauritius, that the marriage was consummated with great difficulty on the part of Josephine, and that she deserted her husband for the entire day during their conjugal journey. After the wedding journey was completed, when Mauritius refused to participate in his father-in-law's negotiations, and would not assume obligations to creditors on his behalf, George threatened to separate his daughter from him. At that time, Mauritius realized that his father had forced Josephine into the marriage in the hope of alleviating the distress of his family's affairs, and then believed that he could deceive the bridegroom with impunity. From this point on, more serious disagreements arose between the spouses; Josephine, as the husband asserts, did not hesitate to recount her past faults to him, she repeatedly left the marital home, and

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finally, after a few months of cohabitation, she fled to the island of Cazaux to her parents, and shortly thereafter, she filed a civil divorce suit against him, which was pronounced in 1887 against Mauritius, as guilty of adultery and of acts of cruelty against the bride. Three years after the divorce decree, Mauritius petitioned the Archbishop of Bordeaux to declare his marriage null and void, due to the lack of true consent on the part of the bride. After the process was initiated, the Archbishop of Bordeaux sent letters to the Archdiocesan Court of the city of Buenos Aires, where the bride, along with her father who had emigrated there with his possessions, had moved, in order that she might be questioned by a delegated judge regarding her marriage. However, the Court of Buenos Aires was unaware of the woman's whereabouts and attempted to summon her without success. Then, the judge of Bordeaux and the defender of the marriage requested the home of Josephine's mother, with the promise that the daughter, upon her return, would appear before the Court. But since the woman did not comply with the summons from the S. C. C. [Sacra Congregatio Canonica], the Court of Bordeaux, in addition to the aforementioned summons,

[*Latin ed. p. 355*]

BORDEAUX. Ad festum sollemnis, missa est ad domicilium Familiae Iosephinae citationis peremptoria, vocans Iosephinam et suos parentes, qui die assignata non comparuerunt, et iam declarabantur contumaces. Denique Curia Burdigalensis sententiam pronunciavit, validitatem matrimonii confirmantem: a qua actor appellavit apud Sanctam Sedem.

DISPUTATIO SYNOPTICA: DEFENS IO VIRI ACTORIS.

Antequam patronus actoris incipiat demonstrationem nullitatis matrimonii ex defectu consensus necessarii, duxit aliquid animadvertere circa sponsae eiusque parentum contumaciam. Talis contumacia, ait ipse, reddit difficilorem demonstrationem thesis, sed certe significat, eos a testimonio ferendo abhoruisse, sive ut conditio actoris difficilis evaderet, sive quia conscientia ipsis non permisit, sub fide iuramenti, violentiam incussam et consensum coactum ac fictum denegare. Nescimus, ait, orator, in primis, quomodo ipsius creditum vel filiae, etsi extitisset, obstaculum insuperabile opponeret sistendi ante Curiam Burdigalensem, ut de veritate factorum testimonium ferret. Sed decantatum creditum non existit, adest enim evidens et definitiva iurium sponsae totalis acceptilatio, emissa iam a mense Iulii 1889, nempe duobus ab hinc annis.

Data etiam sponsae contumacia, nulla alia via erat, observat patronus, ut actor sua iura sustinere posset, nisi ex testium dictis haurire ea omnia, quae demonstrant sponsam coactum et fictum consensum praestitisse.

His praemissis, advocatus probare contendit, Iosephinam praestitisse in matrimonio consensum fictum et coactum, colligens hoc ex factis et adi-

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unctis quae matrimonium praecesserunt: quae observat patronus, demonstrant, Iosephinam matrimonium contraxisse, et consensum dedisse, dum alium, eo ipso temporis momento, amabat, et ut libertatem obtineret. Consensus ergo fuit tantum externus, et oretenus.

[*Latin ed. p. 356*]

356 BURDIGALEN. [Only] this was offered; and this consent, which is by no means sufficient for the validity of marriage, all laws proclaim. Thus, Schmalzgrueber, *Ius eccl. univ.*, part 1, section 1, no. 264: "It is asked what kind of consent must be required for marriage. Answer: 1. It must be free; 2. It must be true, not feigned or simulated, because without true consent, the matrimonial contract does not exist; a simulated contract is not a true one." And Sánchez, *De matr.*, book 3, chapter 25, no. 2: "Consent can be understood in two ways as being the cause of marriage. First, because marriage is a sacrament, and thus it is said to be a cause, insofar as the internal consent is the cause of the external matrimonial contract, in which the reason of the sacrament consists; and secondly, it is not only an efficient, external cause, but also a formal, internal cause, because the words of the contract, insofar as they involve, within themselves, mutual consent, and express it, are the matter and form of this sacrament, as I said in this book, chapter 5, no. 6, and it is confirmed, because the intention of the minister and the recipient is of the essence of the sacrament, and the contracting parties themselves are the ministers of this sacrament and the recipients, as I said in chapter 6, no. 2; therefore, their consent and intention are of the essence of this sacrament. Hence, it follows that marriage is by no means valid if consent is feigned and offered merely with words." If these things, the advocate says, are established in law, then was not that consent, which Josephina offered, truly given? Is it not to be considered feigned and offered merely with words, when she declared to the witnesses that she had consented, only for the purpose of acquiring freedom, while she was pursuing another with a flagrant love and professing fidelity to him? But, the defender continues, even if she was compelled, the consent was given, since the bride has repeatedly stated that she entered into the marriage under coercion from her parents. For Mauritius, in court, narrates: "On the evening of the wedding, as the carriage was going to the countryside, I noticed her sad expression and asked her what was the matter. And as I took her hand, she pushed me away, saying to me: 'It is impossible for me to love you;'"

[*Latin ed. p. 357*]

BORDEAUX. 357. I love Mr. X., to whom my parents had promised to marry me. My father is a scoundrel; he refused him as a son-in-law, because, being a lawyer, he was, in his eyes, a mere peddler of words, and he preferred you because you are a merchant of money, being the son of a money

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changer, inheriting the position. Yes (the marriage was consummated), approximately twelve days after the celebration of the marriage, twelve days of resistance on the part of the wife, and after the consummation of the marriage, she said to me, "You have had me in the flesh, but you will not have me in the heart." "I still love Mr. X." These words, which the bride declares under oath, and whose religion and truth are not to be doubted, as witnesses and the Curia of Bordeaux itself affirm, are also confirmed by the sister of the Good Shepherd, Mary Barger. From the deposition of the parish priest before the Curia of Bordeaux, it is clear that Iosephina revealed her will to the parish priest, requesting that the church declare the marriage null, and only because of force and fear. For if she had spoken generally about the matter of nullity with the parish priest, he, when he presented the marriage contract of Iosephina, would not have judged the page where the words are most forcefully about the nullity arising from force and fear. And if, as an arguing advocate, Iosephina spoke to the parish priest about the nullity of her marriage due to force and fear, there is no doubt that she was aware that she had entered into a marriage forced by her parents, and that she had feigned consent during the celebration of the marriage. These things, having been proven with a flowing pen by the advocate, refute the objections raised by the sentence and by the defender of the marriage bond. And he points out, against the judgment of the Curia, that one must not judge merely superficially regarding the character. Character, or disposition, cannot be so easily judged, but one must inquire into the place, the times, the circumstances, and especially the relationships that exist between the persons in that circumstance, place, and time. In this case, the diagnosis of the character is explained by Mauritius: "She was (Iosephina) proud, haughty, vain; she was violent..."

[*Latin ed. p. 358*]

558 BURDIGALEN. "carried away." But "she was timid and completely under the yoke of her parents." And when questioned, "did she fear displeasing them and causing them distress? No, she did not have that delicate and reverent fear towards them; she submitted to a will superior to her own, that of her father... she was dominated by her parents." This kind of character, the orator said, is declared by all the witnesses, thus confirming the honesty of the client and the truth of his testimony. Furthermore, the advocate reported these other words from the sentence: "That it appears certain that in the first days of their common life, the wife refused to her husband his marital rights, but the marriage was not long in being consummated, as the husband himself loyally acknowledged." And we should not inquire into what happened afterwards, but into what accompanied or immediately followed the marriage. But the very sentence says: "That it appears certain that in the first days the wife refused to her husband his marital rights." How could this be, unless it was due to an aversion towards

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her husband, due to a consent obtained by force and violence imposed by her parents? Therefore, the advocate concluded, the consummation of the marriage, which took place between the spouses, is certainly not that consummation of marriage which demonstrates marital affection; but rather, it confirms more and more the aversion towards her husband, due to a coerced consent.

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENT. On the other hand, the defender of the Sacrament began to point out how, after the civil divorce sentence, Josephine conceived the hope that the marriage would also be annulled by an ecclesiastical judge, and for this purpose she consulted Peter Bonnet, the parish priest of Bruges, who testified: "Madame Josephine came to see me with the superior of Ste. Germaine. She made me aware of her intention to request the religious authority to annul her marriage. She did not tell me that her consent had not been free... but she asked me, for her lawyer, for a treatise on marriage. I lent her Carrier's treatise, indicating the page on force and fear." But all hope...

[*Latin ed. p. 359*]

BORDEAUX. 359. Una persona, afectada por la duda sobre la validez de su matrimonio, abandonó el proceso. En cuanto a Mauricio, el defensor argumentó que el ejemplo de la esposa no fue convincente, y que el proceso iniciado fue infructuoso. De hecho, el tutor observó que Josefina, en la confesión, había manifestado libremente y por su propia voluntad su consentimiento al matrimonio, ante el párroco y los testigos, de tal manera que no se reveló la menor indicación de consentimiento forzado. Él mismo, Mauricio, respondió a la pregunta: "¿Qué sabe usted sobre la manera en que la esposa respondió a la Iglesia, con el 'sí, lo quiero', y sobre su actitud en el sacristía durante la firma y al salir de la iglesia?", respondiendo: "No noté nada de particular". En estas circunstancias, continuó el abogado, como nos enseña la Santa Rota en la decisión 149, § 1, ante el Rota: "Cuando se trata de un matrimonio contraído ante un párroco y dos testigos, según la forma prescrita por el Concilio de Trento, en la sesión 24, capítulo 1, sobre la reforma de los matrimonios, y en el mismo acto de celebración, interviene el libre consentimiento de ambos contrayentes, toda presunción debe favorecer la validez del mismo matrimonio, y ninguna consideración debe darse a las objeciones opuestas, cuando estas no sean tan contundentes y eficaces como para demostrar, de manera inmediata y concluyente, la pretendida nulidad, ya sea por falta de libre consentimiento, o por otra causa invalidante". Y la Instrucción del Santo Oficio de la Inquisición, publicada el 20 de junio de 1883, en el artículo 3, sobre los impedimentos, vis y miedo, § 39, establece: "En este caso, el juez debe saber que el matrimonio es, por sí mismo, un acto solemne y público, que siempre debe considerarse válido, a menos que razones evidentes demuestren su nulidad. Por lo tanto, se debe tener el mayor cuidado y diligencia para que estas razones sean recopiladas,

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pero nunca se debe pronunciar un juicio contra el matrimonio, a menos que la acumulación de estas razones elimine toda prudente duda sobre la existencia del impedimento". Pero, en el presente caso, cualquiera que vea, dijo el defensor, cómo las razones que Mauricio presenta para sugerir coacción, (1) Esta Instrucción fue citada en el volumen XVIII, página 344.

[*Latin ed. p. 360*]

360 BURDIGALAE. Quidquid prudentia dubitat, non debeat omnino excludi; nam, quae demonstrata et explorata sunt, non habentur facta, per quas Iosephina ad consentientem in matrimonio coacta videtur. Ex testibus quos Mauritius adduxit, unam Ioannam Giraud, defensor vinculorum, adducit, qui factum in medium affert, quod ad extorquendum a Iosephina consentientem in matrimonio adhibitum fuerit. Dicit enim Ioanna: "Pater dicabat filiae suae: Si non maritas te Mauricio, non curabo plus de te, sed hoc sine minationibus, quasi diceret: Alium matrimonium tibi non propositum." Urgente sacramenti vindice: "Num habuistis scientiam de minationibus factis a patre, et a matre, ad impellendum filiam eorum ad matrimonium cum Mauricio?" Ioanna iurat: "Nullam scientiam habui de minationibus." Defensor concedit patrem Iosephinae dixisse: "Si non maritas te Mauricio, alium matrimonium tibi non propositum," sed hoc non constituit metum cadentem in constantem virum. Metus, ait ipse, est instantis vel futuri periculi causa mentis trepidatio, *Summa Theologiae*, I, § 1 ff., quod metus causa. Certo autem non ea erat Iosephina, ut eius mens trepidaret ad illa patris verba. Testes prosequitur orator, uno ore Iosephinam in mulierem traducunt, quae parentum voluntatem servit. Sed facta verbis sunt eloquentiora, exclamat defensor vinculorum. In actis factum prostat, quod clare demonstrat, Iosephinam, nec ulli parentum metui esse obnoxiam, nec indigere, ut sibi virum parentes provideant. Aloisius Tabuteau narrat: "Ego eram in Parisiis mense julio anno 1881. Frater meus, ingeniarius consul societatis, coram me confidit haec: 'Suntis tristi: filia nostra nos reliquit, et nobis ducentos quinque francos abstulit. Post octo dies, a militia in hotel invenitur cum iuvene pictore. Tunc habebat annos 15 ad 16'." Quod a testibus et ab ipso etiam auctore confirmatur. Nec matrimonii defensori refert, Bertam Lacoste dixisse: "Familia timebat quod futura (Iosephina) relinquat..."

[*Latin ed. p. 361*]

BORDEAUX. 3.61 The paternal home, in order to escape this marriage, carefully closed the door of their daughter's room at night, and the father sometimes kept watch." For, as he himself said, if the parents feared that Iosephina would flee "to escape this marriage," it was necessary to keep watch not only "sometimes," but every night, indeed even during the day. The other witnesses, the advocate observed, do not recount facts, but are content with little stories. Among these, Mauritius Larronde stands out,

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a witness brought in by the plaintiff after the publication of the sentence, and therefore at a suspicious time. However, Clement V. teaches in *De Clementin. De testib.*, c. 2: "Just as, when witnesses have been properly received and their testimonies published, it is not permissible to present other witnesses, or the same witnesses, in the main cause, regarding the same or directly contradictory matters, so it should not be permissible in the case of an appeal: since, just as in the main cause, so also in appeals, subornation must be feared." With these premises established, the question to be resolved is whether the sentence of the Bordeaux court should be confirmed or overturned in this case. RESOLUTION. After deliberation by the Sacred Congregation on June 22, 1895, it was decided to respond: The sentence should be confirmed.

[*Latin ed. p. 362*]

362. FROM THE CANTON OF TICINI, A REQUEST FROM THE BISHOP CONCERNING THE CUSTOM OF THE CATHEDRAL CHAPTER IN THE CHORAL SERVICE. August 17, 1895. Through summary petitions. The Ordinary of the Diocese of Ticini, in a report concerning the status of his Church transmitted to the Sacred Congregation for the Clergy on February 4, 1895, presented the following request: "In my report, presented in January of 1891, I had inquired: 'Could the custom be maintained which had prevailed in the Cathedral of St. Lawrence in Lugano, namely, that the Conventual Mass, on Sundays and feast days by command, even when dispensed from, be sung; and on other days be read, while the Hours are recited in the choir in the early morning? To the extent that the custom was insufficient, I requested that a special indulgence be granted for this; because the canons are few, and some of them are either Lecturers in the Seminary, or officials in the Bishop's Curia; and therefore they cannot properly, nor without great difficulty, fulfill these duties if they were longer detained in the choir. " "II. Could the custom of the aforementioned Cathedral Chapter of singing the Mass on Saturdays, instead of the Mass corresponding to the Office of the day, be maintained, namely, the Votive Mass of the Blessed Virgin Mary, to which the Chapter is obligated by a certain endowment; or the Mass for the Dead whenever it must be sung for some reason, for example, on account of funerals or anniversaries, so that the Conventual Mass corresponding to the Office of the day be celebrated by another Canon, at whatever hour he pleases, in the absence of the Chapter?" "III. Would it be permissible that during the entire winter, when the canonical Hours are recited in the inner Sacristy, the Conventual Mass be celebrated in the Church, at a free hour, so that the Canons may hear it?" SUMMARY OF THE MATTER.

[*Latin ed. p. 363*]

"In the Canton of TICINI 363, the Holy Congregation responded on

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April 9, 1892, to the following requests: 'Regarding 1, for the sake of expediency, if the circumstances persist, provided that the canonical hours are not recited during the time of the conventual Mass.' Regarding 2, negatively. 'Regarding 3, it cannot be tolerated.' Despite these responses, the aforementioned Chapter did not deem it necessary to abstain from its customs, for the following reasons: 'a) Regarding 1 and 3, a favorable rescript for expediency, granted with the vote of the Bishop, was obtained from the Holy Congregation in the year 1812. (Note: At that time, the Church of St. Lawrence was not yet the Cathedral); b) Regarding 2, the custom has been in place since time immemorial and has been repeatedly approved by the knowing Bishops; furthermore, the access to the Cathedral Church is difficult; also, the small number of canons, most of whom are advanced in age and live far away (with four exceptions) from the Church; and many are dedicated to the care of souls, or to the seminary, or to the Bishop's court.' Therefore, regarding these requests, for the sake of expediency, I renew the prayers in the terms of my previous petition. When asked to provide the documents invoked by the Chapter, which were duly recognized, the Ordinary postponed the matter.

A Synopsis of the Discussion. The following points seem noteworthy in the new form of this question. Because the E.E. [Most Reverend] responded to the previous doubt with: 'For the sake of expediency, if the circumstances persist, provided that the canonical hours are not recited during the time of the conventual Mass,' they seem to have benignly admitted that the conventual Mass should not be sung, except on days of precept, even if suppressed; but they did not wish to consider valid the practice of celebrating the conventual Mass, even if sung, during the time of recitation of the canonical hours. V. e."

[*Latin ed. p. 364*]

364. Of the Fathers of TICINI, because in the 4th doubt it was asked: Whether it is possible to maintain the custom, by which, when the second or third Mass is to be said according to the rubrics of the missal, it may be said at any hour, without the Chapter being present. And also, concerning the extent to which custom is not sufficient, for the reasons given above in question no. 1, an apostolic indult is requested," they considered it best to respond, "Considering the particular circumstances, and if these circumstances persist, as is the case in the present instance," therefore, tempering the strictness of the law with benevolence, they judged it permissible that the second or third Mass be celebrated, even if the Chapter is not present. This is clearly seen to be just and reasonable, if, on the one hand, attention is given to the constant and established practice of the Holy Office, which has repeatedly condemned the practice of celebrating a conventual Mass while the canonical hours are being recited, as was most clearly declared on September 27, 1817, when asked, "Whether the custom of reciting the

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Mass while the first hour is being said, a custom of unknown origin, can be tolerated," the response was: "No, and the rubrics must be observed." On the other hand, the strictness of the canons seems to be limited to only one conventual Mass; so that if the rubrics prescribe a second and third Mass, the application of this is free, but not necessary for the benefit of the faithful, as commanded by Pope Benedict XIV in the celebrated Constitution "Cum semper oblatas" - ibid. - "Where, however, this practice is not found to be customary, the free application of the second and third conventual Masses should be entirely left to those celebrating, provided that they do not forget the commemoration for the dead, and in general, the benefit of the Church."

2. To the second doubt, namely, whether the custom of saying another Mass, either a votive Mass of the Blessed Virgin Mary or a Mass for the Dead, in place of the conventual Mass which is prescribed for that day, can be maintained, even though it was previously said by another canon, without the Chapter being present, the Fathers considered it best to respond, "No."

3. To the third doubt, namely, whether it can be tolerated that the conventual Mass be said throughout the entire winter, without the Chapter being present, the Fathers considered it best to respond, "It cannot be tolerated."

[*Latin ed. p. 365*]

In the Canton of TICINI, 565. Thus, the Most Reverend Fathers more firmly adhere to the principles of constancy, the legitimate interpretation of both the rubrics and the canons. For, when the Sacred Congregation for the Reform of Religious Orders, in its earlier decrees concerning the renewal of religious life, commanded that the rubrics of the Missal be observed in all things and at all times, notwithstanding any pretext or contrary custom, declaring such custom to be an abuse, as Fagnanus recounts in chapter "De celeb. Missar." number 29. In particular, in the decrees of Oseen, March 26, 1592, concerning question 7; in Perugia, August 1766; in Gadiz, January 22, 1768, and in Imola, July 7, 1759, the Sacred Congregations of Rites responded, stating that the conventual Mass should be celebrated according to the office of the day, and that it should not be celebrated at will, but after the third hour or another hour prescribed by the rubrics; notwithstanding any memorable custom to the contrary. Finally, it must be noted that all chapter members are obligated to attend the conventual Mass, and no one should doubt this, given the general duty of residence: since the conventual Mass is the principal part of the Divine Office, as is evident; and this is known to all, as even historical reasoning teaches, as Benedict XIV points out in the aforementioned Constitution, "Cum semper oblatas," § 14. But on the contrary, the Most Reverend Fathers reasoned that they were not bound by the prescriptions of the Sacred Congregation, because what the Bishop had requested had been, in part, already granted to them. Indeed,

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through Apostolic indults granted by the Sacred Nunciature of Lucerne in the year 1812, as narrated in the aforementioned documents, the Bishop had granted the requests of the Chapter, firstly, that the conventual Mass should be sung only on feast days, even those suppressed, while on other days, the Divine Office should be read during the hours of prayer; secondly, that during the winter months, while the canons were reciting the Divine Office in the sacristry, the conventual Mass should be celebrated at any hour in the church, and the chapter members should not be required to attend it. It is also worth noting that these concessions were granted to the canons when their church had not yet been elevated to the dignity of a cathedral church, as the Bishop notes in the aforementioned petition.

[*Latin ed. p. 366*]

366. Of TICINI: Even in such a benevolent concession, the requirement expressed in paragraph 2 is not included; namely, whether the custom of singing, in place of the conventual Mass previously celebrated, a votive Mass of the Blessed Virgin Mary, or a Mass for the Dead, can be maintained when the Chapter is not present. This custom, though highly memorable, is nevertheless contrary to the Sacred Rubrics in no small measure, yet the Bishop prays that the Holy Congregation may deign to confirm it, and to consider it valid, because "access to the Cathedral Church is difficult, and also the number of canons is small, most of whom are weakened by old age, and, with the exception of four, live far from the Church; and many are devoted to the care of souls, or to the Seminary, or to the Episcopal curia." With these premises, it was asked what response should be given to the prayers. RESOLUTION. The Holy Congregation, after deliberation on August 1st, decided to respond: "Considering the particular circumstances, for a period of ten years, if so it pleases, upon the word given by the Most Reverend Congregation of Bishops and Regular Canons of ORANENSE."

(1) Regarding Property and Expulsion. August 23, 1895. SUMMARY OF THE CASE. A question arose, on the one hand, between the Reverend Father Joseph Catà, who had emigrated from Hispania to the diocese of Oran, where he had founded a hospice for poor girls of Spanish origin, and to whose direction the Sisters of the Society of Saint Teresa had been entrusted; and, on the other hand, the Curia of Oran, concerning the property, administration, and direction of the aforementioned hospice, in general assemblies of the Congregation. (1) See the presentation and discussion of this case in the preceding volume, XXVI, 156.

[*Latin ed. p. 367*]

ORAN. On June 2, 1893, the following questions were proposed to the Congregation of Bishops and Regulars: I. Does the property or simple administration of the Asylum pertain to the priest of Catà in this case? II. How is the expulsion of the Sisters of St. Teresa from the Asylum justified; and

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does the priest of Catà incur ecclesiastical censure by expelling them in this case? III. Is he obligated to remove the so-called AFRICANISTS from the direction of the Asylum? These questions were resolved on the same day as follows: Regarding I and II, the answer is negative in all respects. Regarding III, the answer is affirmative, and further, it is understood that Catà remains suspended from divine functions: 1. Until he fully executes the present resolution; 2. Until he seeks forgiveness from the Bishop and adequately repairs the scandal caused; 3. Until he commits himself to the Bishop so that the civil title of the Asylum may be transferred to other persons, if and insofar as the Bishop deems it appropriate. Furthermore, this priest of Catà initially requested the benefit of a new hearing; but later, having changed his mind, he decided to accept the resolution, and, having informed the Bishop of Oran of this, he requested him in writing to indicate the manner in which the civil title of the Asylum could be transferred. Simultaneously, having been informed of this, he requested the Holy Congregation to relax the imposed suspension. In response to these requests, the Bishop of Oran replied that the alleged submission did not correspond to the facts; that the Africanist sisters, dismissed from the Institute, had opened a house in the diocese, causing scandal to the faithful; and that he could not accept the transfer of the civil title of the Asylum, both because the priest of Catà refused to present his financial situation, and because he claimed that the Asylum was burdened with a debt of 30,000 livres. Nevertheless, despite these circumstances, the Holy Congregation issued the following decree on December 1, 1893: "To the Bishop, with the power to absolve the Orator from the suspension." As for the conduct of the Africanists and the debt newly incurred by the priest of Catà...

[*Latin ed. p. 368*]

368 ORAN. "It is shown that the Bishop should exercise his right." If the Bishop refuses to execute this rescript, and the priest Catà repeatedly urges [action], even with the help of a legate from Spain to the Holy See for the relaxation of the suspension, asserting among other things that the disputed asylum belongs to the Spanish nation, the Holy Congregation decided to write again to the Bishop: "It should be written to the Bishop, whether it is opportune and expedient to have the transfer of ownership of the building carried out by the priest Catà, having taken into account the asserted debt of 31 million, the legitimacy of which must be proven by the ecclesiastical court, in due order. Furthermore, the opinion of the Bishop himself should be sought regarding the petition presented by the legate of Spain to the Secretary of State at the Holy See, in which it is asserted that the building in question belongs to the Spanish, even though the funds were extracted [from elsewhere]." The Bishop, in his written responses of February 26, 1894, declares that he only recognizes the debts incurred by the asylum prior to the decision of the Holy Congregation of

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June 2, 1893, which, after all calculations, he says amount to 4000 [units]; he denies, however, the validity of any subsequent debts, considering them to be the responsibility of the priest Catà. Furthermore, he strongly opposes any further discussion regarding the legitimacy of the debt of 31 million, which would be an attempt to undermine the related decision of the Holy Congregation, and which would seek to revive the matter again through such pretexts. Regarding, however, the claim that the asylum belongs to the Spanish, he observes, among other things, that this has already been established before the Spanish donations were collected. However, after the priest Catà further petitioned for the restoration of his right to celebrate Mass, the Holy Congregation finally granted this request with a rescript of April 24, 1894, "but outside the Oran diocese and with restrictions." Meanwhile, the priest Catà, having been informed of the statements made by the Bishop as related above, presented current accounts of the asylum with various allegations; from these, it results that Catà had collected 43409.76 [units] and had spent 64937.76 [units]; thus, the debt incurred amounted to 21528 [units]. To cover this debt, he had contracted loans with the priest Vincent Carrasco and with a certain Francisco Guardiola.

[*Latin ed. p. 369*]

ORAN. 369. Furthermore, the Bishop refutes the arguments presented by the priest Catà, considering them false and fabricated, and he proves this with calculations and reasons presented by Catà himself in the year 1891, for the purpose of approval, to the Cardinal Archbishop of Toledo, from which it appears that there is only a difference in the amount of 609.76. Moreover, he explicitly rejects the two points previously mentioned, and especially that of Francis Guardiola, which, since it was agreed upon in the year 1894, or after the sentence of the Holy Congregation, he considers to be of no value; hence, he concludes with the total rejection of the priest Catà's petition. Nevertheless, since the procurator of this case insisted strongly on a prior review of the case and a complete restitution, and since, otherwise, the aforementioned Asylum could be exposed to a serious detriment due to unpaid taxes and unsatisfied debts to the mortgage creditors, the moderators of the Holy Congregation agreed to the re-presentation of the case under the formula of doubts, as will be explained below.

A SYNOPTIC DISCUSSION: DEFENSE OF THE PRIEST CATÀ. The defender first presents the external reasons for granting a complete restitution: and he states that there are two, of which the first is that the case was resolved by a single decision, and indeed one that is endowed with a clause and has the force of res judicata; therefore, since the ordinary remedy of appeal is not applicable, equity demands that this extraordinary remedy of complete restitution be granted, which should take the place of an appeal. The second external reason is derived from the gravity of the case; for it contains the highest legal questions, such as whether the aforementioned

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Asylum is lay or ecclesiastical, whether it is a place of worship or a simple pious work, whether the approval of the Ordinary for the collection of a contribution for the construction of a building is equivalent to the canonical erection, and others which he mentions, which are numerous and weighty in themselves, and it is fitting that they be subjected to a double examination.

The defender then proceeds to the internal reasons. Indeed, he says, it cannot be denied, and even the Ordinary of Oran himself admits, Volume XXVIII, page CCCXXX, number 24.

[*Latin ed. p. 370*]

370. The Bishop of ORANEN sends [a communication], stating that the right and title of founder pertain to the priest Catà; however, the Holy Congregation, in response to a doubt presented regarding whether and in what way the property or simple administration of the Asylum pertains to the priest Catà in this case, responded negatively in all respects, denying him this title; indeed, it is necessary diligently to distinguish between the real right of ownership and the right of property, which also includes the right of the founder. Therefore, since the decision issued contradicts the spirit of the sacred canons, which intend to reserve this title of founder, because it is fitting to encourage pious men to undertake new works for the public good, it ought to be revoked. He notes that the previous Defenders erred in the initial discussion of the case by raising the question of ownership, as if the priest Catà wished to claim ownership of the Asylum; this did not correspond to the objective of the question, nor to the intention of Catà himself, who only wished to reserve for himself the right of founder and author. Furthermore, the advocate insists that the Asylum, in this case, is a work of the lay faithful, and he proves this: 1. from the end, which, according to St. Thomas and Aristotle, determines the nature of a thing; for it is known that ecclesiastical works are those directed towards religious worship or the good of souls; while lay works are those directed towards another purpose; but in the case of the Asylum, the end is the sustenance, support, and education of poor girls; 2. from the means; for the institution was established from private, lay contributions, and therefore, with respect to this, it cannot in any way be called ecclesiastical; 3. finally, from the persons who are maintained in the institution: for these are poor girls, and they remain there as long as the necessary subsidies do not fail; hence, the Asylum lacks that character of perpetuity, which is required in ecclesiastical foundations. Assuming that the work founded by the priest Catà is a lay work, it could not be unjustly denied to its founder the administration thereof. What, then, does the Bishop of Oran offer to prove its ecclesiastical nature, namely, the permission granted by himself to place a collection box in the Church for alms in favor of the institution, and the faculty of

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collecting subsidies for...

[*Latin ed. p. 371*]

ORAN. 371. Regarding the same matter, even outside the diocese: the defender responded that this permission could not be considered as a canonically erected institution, but rather as an act of ecclesiastical policy, and that, for a just and sufficient reason (Fagnan, ad cap. 14, lib. 5, Decretalium, de poenit. et remis), it was established to determine whether such individuals are truly what they claim to be; for it often happens that, assuming the outward appearance of a certain religion, they are in reality something else. Therefore, since the aforementioned Asylum is merely a pious lay work, only a visitation by the Bishop is permissible, and not interference in its administration, which is entirely reserved to the founder of the Asylum. Furthermore, the defender continues, and the Oranensis Curia itself acknowledges, that in Gallia, pious ecclesiastical works lack the capacity to possess property; nor did the Curia ever intend to incorporate the Asylum. Therefore, the oblations were given to the priest Catà according to the law, so that he, as the founder, acting as a legal person, would be the owner and administrator of the Asylum, even before the laws; and that he acted independently of the Oranensis ecclesiastical authority, it is proven by countless facts in the establishment of the Asylum. The organic rules drawn up by him were approved by civil authority and not by ecclesiastical authority; the priest Catà presided over the Commissions of the Fabric, he directed the workers, he entered into the lease agreement with the Sisters of Charity, in short, the Asylum was erected and organized by the priest Catà without the intervention of ecclesiastical authority; therefore, the Bishop of Oran, in his report, concluded that it seemed natural to him that the priest Catà should be registered with the title of civil ownership. Therefore, if the Asylum is a pious lay work, it is clearly an unjust decision of the Sacred Congregation, which denies the priest Catà all rights as the founder over the Asylum that he himself erected, organized, and administered. Subsequently, the defender refutes the objection of the Oranensis Curia, which is as follows: the priest Catà, relying on the apparent title of civil ownership, has always claimed the right of ownership over the Asylum; therefore, it is not permissible now to change the subject of the dispute, by restricting the claim to the right granted to founders, so that a quasi-judicial contract arising from the dispute is not violated.

[*Latin ed. p. 372*]

372. To this objection, the defender responds as follows: Whether the question is considered merely a civil one, it cannot be doubted that the priest Català also possesses dominion over Asolo; or whether it is a question of conscience and of the ecclesiastical forum, then undoubtedly the reserved right belongs to all founders of pious works: in either case, the in-

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justice of the resolution is always evident. He denies that there is a violation of a quasi-contractual agreement, because the dispute concerned not only the civil title of ownership, but also the canonical title of foundation, and encompassed both the right of property and the right of administration, and therefore also the right reserved to the founders. Furthermore, the defender, addressing the second doubt concerning the expulsion of the Sisters of St. Teresa from Asolo, maintains that the decision of the Holy Congregation was equally unjust: indeed, in that resolution, it is stated that Father Català did not incur ecclesiastical censures, and yet, contradictorily, the legitimacy of the expulsion is denied. In truth, when Father Català brought the Sisters of St. Teresa before a secular tribunal, he was declared not to have incurred ecclesiastical censures, because the privilege of the ecclesiastical forum does not hold in the diocese of Oran as it does in France, and because the aforementioned sisters had no canonical institution in Asolo, as the Oran court claimed, but were merely employees or tenants of the property; for the same reasons, a legitimate expulsion was due, since it was ordered by a competent magistrate, whose acts cannot be declared illegitimate without disturbing public order. However, the Oran court adds: Father Català expelled the sisters under the pretext of a civil title, because he wanted to seize Asolo. The defender refutes this objection as follows: Father Català certainly alleged a civil title, but not with the intention of acquiring the property for himself, but with the intention of defending himself: the Teresian Sisters no longer complied with the conditions initially imposed and accepted by them; they arbitrarily increased the number of sisters from 5 to 12; they admitted girls, not from poor families, but from wealthy families; and they no longer heeded the voice of Father Català: hence, their expulsion was necessary, after all means of correction had been tried in vain.

[*Latin ed. p. 373*]

ORANENSIS. 575. It had escaped; in order to achieve this, the Reverend Catà was obliged to act as if he were the lord of Asolo, or to allege a civil title: but who would assert that this allegation of a title was made with the intention of obtaining or usurping something? Finally, the defender, after refuting many other arguments presented by the Oranensis Curia, states that the acceptance of the decision made by the Reverend Catà should not be considered of any value: for it was not made voluntarily, nor without any coercion, but rather was issued under the threat of suspension from divine duties, unless he immediately and without delay complied with the decision of the Holy Congregation: hence it is that the Reverend Catà, at the same time, implored the benefit of a new hearing; which clearly demonstrates that he did not wish to acquiesce in the decision that had been issued. DEFENSE OF THE BISHOP OF ORAN. On the contrary, the Bishop observes, first of all, that the decision of the Holy Congregation of

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July 2, 1893, not only passed into a matter already judged, but was also fully accepted by the Reverend Catà himself, as is evident from two writings of the Reverend Catà, which he adduces: hence, the petition for a new review of the case is rather a means devised to evade the force of the decision that had been issued. And this is all the more urgent because the arguments presented by the defender are based on no solid foundation. Indeed, the claim on the part of the defender of the Reverend Catà, that in the previous discussion of the case, the question was not put in its true terms and according to the intention of Catà, is openly refuted by the facts and words of Catà himself: and this is demonstrated by referring to the documents already presented in the first discussion of the case; from which it is evident that 1. the true intention of the Reverend Catà was to have absolute dominion over Asolo, as if it were his property; 2. that the dispute over this alleged right of dominion was the primary cause of the litigation; hence, the defenders of Catà could not have been mistaken, nor could they be mistaken, in the question to be established; hence, they responded to the intention of their client. Having said this, the Bishop absolutely rejects what the defender of the Reverend Catà brings forward in his petition for obtaining the benefit of a new hearing: he says that it is false that the Reverend Catà invoked...

[*Latin ed. p. 374*]

574. ORANEN: He claims that the presumed right of property does not stem from the intention of possessing dominion over the Asylum, but rather from the need to remove the Sisters of St. Teresa; furthermore, he asserts that the Sacred Congregation bases its entire argument on the right of property which he claims for himself in the Asylum. He also denies that the question of the moral or material administration of the Asylum, which, according to him, is the true and only question, has been discussed and resolved by the Sacred Congregation. Although the Bishop has recognized the title of founder of the Sacred Congregation, to whom he constantly refers in his writings, the question remains whether the Sacred Congregation possesses property or merely administrative authority over the Asylum? The Sacred Congregation responded negatively to both of these points. Finally, he denies that the question raised, as the opposing defender claims, absorbs the question of rendering an account of the collected and disbursed alms; for this obligation always remains, whatever the outcome of the main controversy. He also denies that the fate of the nascent Institute depends on this resolution, as the aforementioned defender also asserted, except, he adds, in the case where the Sacred Congregation does not abuse the civil title with which it is invested to harm the Institute, which, he claims, is demonstrably the case. In conclusion, the Bishop warns the Sacred Congregation that the Sacred Congregation, in order to obtain the opportunity to re-present the case, has already entrusted its property to its representative, with the intention

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of selling the Asylum as soon as possible, and that an agreement has been reached with a certain Fynet, who is eager to acquire the Institute for the sum of 45,000 livres. The Bishop adds that this is solely dependent on the free will of the Sacred Congregation, and not on the judicial actions of the tax collector or the mortgage creditors of the Asylum, and this, he argues, is a new argument of the Sacred Congregation's bad faith, who, confident in its civil title of property, disregards the resolutions of the Sacred Congregation. These are the main points, summarized on both sides.

[*Latin ed. p. 375*]

ORANEN. 575. Doubt I. Whether there is a place for complete restitution in this case. And to the extent that it is affirmative. II. And how should the decision of June 2, 1893, in the case be confirmed or revoked? RESOLUTION. The Holy Congregation, after mature discussion on August 23, 1895, responded as follows: To I. Negatively. To II. As provided in the first point and with the understanding of the same. FROM THESE, ONE MAY CONCLUDE: I. Although in the court of appeal it is not forbidden to present new evidence, according to the saying: "I will not draw conclusions from what has not been presented, nor will I prove what has not been proven," nevertheless, it is not permitted to change the subject of the dispute, because this would violate the quasi-contract arising from the litigation, which should bind the parties; therefore, rightly, the Holy Congregation did not consider what the priest Procurator for Catà presented regarding the erroneous presentation of the question in the proposition of the other case. II. Complete restitution is not granted against a judgment: 1. when the party requesting it has already received [something]; 2. when, during the pending proceedings for complete restitution, the party requesting it commits an offense against the impugned decision, because with this, it demonstrates bad faith and contempt for the judge, and it is presumed that it will not execute a new decision. III. In judging whether a certain work of piety is lay or ecclesiastical, the following must be considered, among other things: 1. the purpose to which it is directed; 2. the means by which it is founded; 3. the persons it affects; therefore, Sebastian Berardi stated that hospitals, by their very nature, are least of all among ecclesiastical matters.

[*Latin ed. p. 376*]

376 FROM THE HOLY CONGREGATION FOR RITES. The presbyters of the Sacred Congregation of the Most Holy Sacrament. Doubts concerning the commemoration of the Most Holy Sacrament and other matters, etc. The Reverend General Procurator of the Sacred Congregation of the Most Holy Sacrament, at the request of the Holy Congregation for Rites, has requested that the following doubts be declared:

I. In a church dedicated to the Most Heoly Eucharist, when the office of

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the day is being celebrated, must a commemoration of the Most Holy Sacrament be made in the prayers, omitting the commemoration of the Cross, or rather, must the commemoration of the Cross be omitted, omitting the commemoration of the Most Holy Eucharist?

II. The Holy Congregation for Rites, by decree of April 3, 1884, has graciously granted to the Sacred Congregation of the Most Holy Sacrament, that on the fifth day of the week which occurs first in any month, the [Solemn] Commemoration of the Most Holy Eucharist may be celebrated with a greater double rite, provided that on that day no feast of equal or higher rank or dignity occurs. It is asked:

1. Does this Solemn Commemoration have precedence over a secondary feast of the same rite, but not of the same rank or dignity, such as the feast of the Blessed Virgin Mary, both when it occurs and when it coincides?

2. Must such a Solemn Commemoration, when it coincides with a secondary feast of the same rite and the same dignity, be celebrated of the Most Holy Sacrament or of the following [Mass]?

III. After a private exposition of the Most Holy Sacrament, that is, with the door of the tabernacle open, can the Blessing be given with the same Venerable Sacrament hidden in the pyx?

IV. When a priest celebrating before the Most Holy Sacrament manifestly exposed, while reading the Gospel, says "And the Word was made flesh and dwelt among us (and we saw his glory, the glory as it were of the only begotten of the Father), full of grace and truth," does he bend the knee somewhat towards the Most Holy Sacrament? It is asked: Must he make an inclination towards the same Venerable Sacrament each time he pronounces the name Jesus in the reading of the Gospel?

And the same Sacred Congregation, in response to the report of the undersigned Secretary, and at the earnest request of another from the Apostolic Ceremonies Office,

[*Latin ed. p. 377*]

From the Sacred Congregation of Rites, after mature and diligent consideration of the doubts presented, it was decided to respond as follows: To I. Affirmative to the first part; Negative to the second. To II. Negative to the first question. Regarding the second, the entire matter pertains to the Feast with the Commemoration of the Votive Office. To III. Affirmative. To IV. Affirmative. And thus it was written. On November 30, 1895. G. CARD. ALOISI-MASELLA, Prefect, Sacred Roman College. L. & S. ALOISIUS TRIPEPI, Secretary, Sacred Roman College. NEAPLES. Concerning the Beatification and Canonization of the Servant of God, Francis, a priest of Naples, of the Order of Friars Minor of the Observance of St. Francis, a Reformer. In Naples, on the tenth day of September in the year 1763, the Servant of God was born to pious and honorable parents, Joseph Mangano

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and Maria di Bisogno, to whom the names Francis and Mary were given at the sacred font. From his tender years, imbued with Christian instruction and confirmed with the sacred chrism, he displayed gentle and excellent conduct. As a young man, constantly devoted to prayer, he frequently visited the Church of the Most Holy Trinity, which was near his home, and there he often received the sacraments. When he was still sixteen years of age, emulating greater virtues, he entered the Order of Friars Minor of the Observance of St. Francis, and on August 10th of the year 1779, he received the religious habit. After completing his novitiate properly, he was admitted, by the unanimous consent of the Fathers, to pronounce his solemn vows, and, constantly obedient to the will of his Superiors, he devoted himself to philosophical and theological studies. He was ordained to the priesthood by the Most Reverend Bishop Spinola, and shortly thereafter, he was approved to hear confessions in the Archdiocese of Naples. Meanwhile, in the same monastery, he first served as a master of the novices, and then as a master of the clerics, so promoting the regular observance in himself and in his disciples.

[*Latin ed. p. 378*]

378. EXEMPLAR of religious men who, under his guidance, have made great progress in the sanctity of life and in virtues. Nor did the Servant of God use any other means during the time he served as Vicar of the community, to which was added the administration of the divine Word to the people, the establishment of a Sunday school for children, and the constant administration of the sacraments. However, in the sixty-sixth year of his age, Francis began to suffer from a stroke, which, progressing further, afflicted his body for almost a decade. This condition was borne with great patience by the true disciple of Christ, who had best known that virtue is perfected in weakness and in tribulation. Finally, weakened by old age and illness, he peacefully fell asleep in the Lord on December 31st; and his body, emitting a sweet fragrance, was found incorrupt after thirty-seven days, and, with the concurrence of the clergy and the people, was transferred after ten years, from the common burial ground to the church of the monastery. Subsequently, the fame of the sanctity of life, virtues, and miracles of the Servant of God grew more and more, so that, after the ordinary ecclesiastical court of Karlova had completed the legal proceedings, and the matter had been presented to the Congregation of Sacred Rites, the Most Holy Pope Leo XIII, at the urging of the Reverend Promoter of this Cause, with supplications in letters from the Most Reverend Cardinals, and from many Most Reverend Prelates, as well as from Chapters and Religious Orders, graciously decreed that a question regarding the appointment of a Commission for the introduction of the Cause of the Servant of God should be proposed and discussed at the meetings of the Congregation of Sacred Rites, without the intervention or vote of the Consultors; and this

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was done when, at a meeting held at the Vatican on July 28, 1888, and at another meeting held on the same day, the aforementioned question was again proposed by the Most Reverend and Right Reverend Lord Cardinal L. M. Parocchi, Bishop of Albanensi, and the Promoter of the Cause, the Most Reverend Fathers, after hearing the opinion of the Reverend Father D. Augustine Caprara, Promoter of the Sacred Congregation of the Faith, decided to respond: "Affirmatively"; that is, that the Commission should be appointed, if it should please the Most Holy Pope in December 1895. On the 10th of De-

[*Latin ed. p. 379*]

FROM THE SACRED RITUALS, 379. Subsequent events concerning these matters were reported to the Most Holy Lord Pope Leo XIII by the undersigned Cardinal, and His Holiness approved and confirmed the judgment of the Sacred Congregation, and deigned to sign the Commission for the Introduction of the cause of the aforementioned Servant of God, on the twelfth day of the same month and year.

[Signed:] CARD. ALOISIUS MASELLA, S. B. C., Prefect.

[Signed:] L. ALOISIUS TRIPEPI, S. R. C., Secretary.

CONCERNING the Beatification and Canonization of the Servant of God, Brother Marianus ab Arce Casali, a lay professed member of the Order of Friars Minor, of the observance of Saint Francis, in the retreat near Civitella.

In the Sacred Retreat of Saint Francis near Civitella, many religious have distinguished themselves by the sanctity of their lives, among whom, without doubt, the Servant of God, Brother Marianus ab Arce Casali, should be mentioned, who, performing the humble office of doorkeeper, lived a long and holy life. Born in the town of Aprutina, in Arce Casali, in the diocese of Sulmona, on the tenth day of January in the year 1778, the boy received piety from his parents, accompanied by poverty, which, as God wondrously arranged, prepared a pleasant dwelling in the heart of Marianus. The young man, devoted to tending flocks, scorned the vanities of the world and its allurements, and tasted the delights of a solitary life. Obeying the Divine Will, which illuminated his mind and inflamed his soul, he requested and obtained the habit of Saint Francis in Aprutina, in the Province of Saint Bernard, and, having completed his novitiate, he pronounced his solemn vows with ineffable joy on the third day of September in the year 1803. Believing that the Servant of God would make greater progress in the Seraphic School at Civitella, he endeavored to go there, and first as a guest, and then as a son, he was received into the Roman Province, and inhabited that sacred convent for his entire life. There, through various...

[*Latin ed. p. 380*]

380 From the records of the Brothers, the duties of this brother, who

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served as a mendicant, cook, gardener, and carpenter, were approved. For nearly fifty years, he diligently performed the office of gatekeeper, beloved by God and men. For he was accustomed to instructing both young and uneducated boys in the doctrines of faith and morals, to pray for a long time before the Holy Eucharist, and to attend or assist at the sacred services with great devotion; which occurred especially when, due to his advanced age, he had an assistant in his office. Finally, Brother Marian, having completed many years and months, was seized by a fatal illness, and, fortified by the sacraments, he departed from this earthly pilgrimage to his heavenly homeland, on the last day of the month of March in the year 1866, while the Feast of the Most Holy Body of Christ was being celebrated, which had been his sustenance and pledge of eternal blessedness. Meanwhile, the miracles which God then wrought, and the reputation for holiness of the life of His servant, attracted crowds of townspeople and pilgrims to the Monastery and the Church of St. Francis, so that they might venerate his remains, which were hidden in the chapel of St. Thomas of Cori, and implore powerful help from divine mercy. When, moreover, the fame of the holiness of his life and virtues, and also, as is said, of certain prodigious signs, had increased, a proper inquiry was duly instituted by the Ordinary Ecclesiastical Court of Subiaco and reported to the Congregation of Sacred Rites. At the urgent request of the Most Reverend Promoter of this Cause, along with supplications in letters from the Most Eminent Cardinals of the Holy Roman Church, and from many other Most Reverend prelates, as well as from numerous men of both the clergy and laity, the Most Holy Pope Leo XIII graciously granted that a question regarding the appointment of a Commission for the introduction of the cause of this Servant of God in the Assemblies of the Ordinary Congregation of Sacred Rites might be proposed and discussed without the intervention and vote of the Consultors. Therefore, the Most Eminent and Reverend Cardinal Aloisius Macchi, on the aforementioned day, at a meeting held in the Vatican, proposed the question, and the Most Eminent and Reverend Fathers, after hearing the voice and the written opinion of the Reverend Father D. Augustine Caprara, Promoter of the Faith, decided that the answer should be: Affirmative, that is, that the Commission should be appointed, if it pleases the Most Holy [Pope]. On December 10, 1895, concerning all of which, information was given to the Most Holy Pope Leo XIII.

[*Latin ed. p. 381*]

381 FROM THE SACRED RITUAL, by order of Pope XIII, through the following report from the Cardinal, His Holiness approved and confirmed the judgment of the Sacred Congregation, and deigned to sign the Commission for the Introduction of the Cause of the aforementioned Servant of God, Father Mariani ab Arce Casali, on the 12th day of the same month and year. CAL CARD. ALOISIUS MASELLA, Prefect of the Sacred Con-

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gregation for the Holy Office. L. S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation for the Holy Office. FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH To the Most Reverend and Illustrious Lord Cardinal Alexander Taschereau, Archbishop of Quebec, concerning our schools. Most Eminent and Reverend Lord. This Sacred Congregation has learned of the grave difficulties that have arisen for Catholics in Manitoba regarding the administration of schools, recently enacted by the Government of that Province. This is all the more regrettable, as it contradicts the favorable conditions for Catholics established in that region by solemn agreements, and as the flourishing Catholic schools there are brought into disrepute. Therefore, it is fitting that the protection of Catholics in this grave danger should be entrusted to the Federal Government, and the most noble bishops of all Canada have undertaken this task. Nor has the will or authority of the Federal Government been lacking in defending the rights of Catholics and the efforts of the Bishops. However, significant obstacles have hitherto prevented the matter from proceeding as it should. Now, however, since the Federal Government has been granted certain authority to address this most serious matter by a recent decree from the Royal Council in England, there is hope that the matter will finally be resolved in the most firm manner.

[*Latin ed. p. 382*]

382 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, rights, the good of religion, and the benefit of the commonwealth are demanded. However, the opportune moment must be seized with eagerness, and the Catholics of Tulle must not be abandoned. Therefore, this Holy Council cannot remain silent on a matter of such importance, but rather encourages those who have already established and strengthened the studies of Catholics, especially of Canadian bishops; and, while praising the efforts already devoted to this cause with deserved commendation, it also urges them to add their zeal so that, with all their strength, they may pursue this most noble undertaking and bring it to a happy conclusion. For in the minds of some, a false opinion has taken root, namely that there is no danger in schools which they call "neutral," and that these can be attended by Catholic children without discrimination. Indeed, by excluding all those things which are said to belong to "neutral" schools, simply because they exclude, along with other things, even true religion, they inflict a grave injury upon it, since it is deprived of that prominent place which it ought to hold in all of human life, and especially in the education of youth. Nor can it be asserted that the private care of parents can sufficiently compensate for this deficiency. Indeed, this remedy can only be partially effective, but it does not excuse the worst defect of that education which is devoid of God in the schools. And to this must be added that the dignity of religion must be diminished in

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the estimation of children if they see it relegated within the confines of the domestic walls, as if lacking public honor. Furthermore, what if parents, through negligence or preoccupation, act more slowly than is customary; and do not sufficiently care for the religious instruction of their children, either by themselves or through others, outside of the discipline observed by them in schools? Therefore, nothing can be more beneficial for the preservation of the faith among the people, especially at this time when we see it beset by so many storms, than the Catholic schools, which instill, cultivate, and strengthen religion and piety in the tender minds of children, so that, along with the rudiments of letters and the liberal arts, the principles of the Christian life may be deeply rooted, and firmly retained throughout the course of their lives. In.

[*Latin ed. p. 383*]

585 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: Whoever has contributed studies and efforts to this work shall be rightly considered to have deserved merit in the eyes of the Church. Furthermore, these most firm principles, upon which the Canadian Bishops consistently and steadfastly insist, now move this Holy Council to vigorously commend the rights of the Catholic province of Manitoba concerning the religious education of children, so that these rights, as justice promises, may be defended, and a grave injustice averted by the Church. In the meantime, I humbly kiss your hands, Most Eminent, your most humble and devoted servant, CARDINAL M. LEDOCHOWSKI, Prefect. ARCHIEPISCOP LARISSEN, Secretary. FROM THE 8TH HOLY CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION: A doubt arises concerning surgical procedures, not directly aimed at the killing of the fetus in the mother's womb, but so that it may be brought forth alive, although it is very close to death. Most Blessed Father, Stephen, Mary, Alphonsus Sounois, Archbishop of Cambray, having prostrated himself before Your Holiness, humbly presents the following: A certain doctor, having been called to attend a pregnant woman who was gravely ill, observed that the cause of her deadly illness was nothing other than the pregnancy itself, that is, the presence of the fetus in the womb. Therefore, in order to save the mother from certain and imminent death, there was a way to procure an abortion, or the extraction of the fetus. This path he customarily followed, using certain means and operations, by himself and—

[*Latin ed. p. 384*]

384 FROM the SACRED CONGREGATION of the Inquisition, not concerning those who intend to kill the fetus in the mother's womb, but only concerning those who wish, if possible, to bring the living child to the light, even if it were near death, since it is still entirely immature. Indeed,

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the Holy See wrote to the Archbishops of Cambray on August 19, 1888: it cannot be safely taught that any operation directly causing the death of the fetus is licit, even if this were necessary to save the mother. The case of Titus is doubtful concerning the licitness of surgical procedures, by which he himself had often previously procured abortions, in order to save pregnant women who were gravely ill. Therefore, in order to consult his conscience, Titus humbly requests: Whether he can safely perform the aforementioned operations under the repeated circumstances mentioned. On Thursday, July 24, 1895. In the General Congregation of the Sacred Roman and Universal Inquisition, the aforementioned request being presented, the Most Eminent and Reverend Lords, Cardinals, Inquisitors General in matters of Faith and morals, after the vote of the Most Reverend Consultors, decreed that the following should be answered: Negatively, according to other decrees, namely those of May 28, 1884, and August 19, 1888 (1). On the following Friday, July 25, in an audience granted to the Most Reverend Father Assessor, the Most Holy Lord approved the resolution of the Most Reverend Fathers. L. * S. Ios. MANCINI, Canon. MAGNONI, of the Sacred Roman and Universal Inquisition (1). * Recole, Vol. XVI, 556, and Vol. XXII, 748. Notary.

[*Latin ed. p. 385*]

385 Letters from His Holiness Pope Leo XIII to the Reverend Lambert Eygenraam, director of the periodical *De Tijd*, and its associates, the writers. It is indeed a most commendable and worthy undertaking that, in the year drawing to a close, which marks the fiftieth anniversary since the founding of this periodical, you wish to commemorate and celebrate this auspicious occasion. The news of this has pleased Us greatly. We know that from its very beginnings, the writers of this publication have held certain principles, and that they have, in many ways, provided great benefits. Indeed, with unwavering fidelity to the observance and discipline of the Holy Mother Church, they have consistently upheld the dignity and truth of the Catholic cause, diligently striving to promote whatever contributes to the civil good, honor, or prosperity. And their praise is most deserved, both for their efforts in restoring the hierarchy, a most important undertaking, which they have pursued prudently and successfully, and also for their zealous defense of the truth and Catholic institutions against the manifold errors of the age. — And these things which We say, especially with regard to the aforementioned times, We wish to apply equally to you, Our beloved sons, who, having entered reverently into the footsteps of your predecessors, demonstrate the same zeal and dedication, and whose actions have long proven worthy of emulation. And since it is most desirable that you may respond to Our increasingly fervent expectations, this will certainly not be lacking if you continue to be defenders of the religion, which is the same cause as the common good, not only with ardent zeal, but also with

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the utmost confidence in those safeguards which the divine precepts of the Gospel and the documents of this Apostolic See provide opportunely. — In this, you readily see that, given the circumstances, the office of your ministry is not merely a final one, but that you should diligently seize every opportunity to strengthen and bring light to the minds of those concerned about religion. From this, We ourselves derive hope that your judgment and diligence can contribute greatly to the furtherance of Our own plans; in particular, We are now striving with greater effort to foster reconciliation among Christian peoples who are deprived of the unity of the Catholic faith. This, however, requires a thorough and appropriate treatment of the fundamental doctrine concerning the unity of faith and communion which Christ established within the Church, as found in *Acta*, Volume XXVIII, page OG C XXXI. 25.

[*Latin ed. p. 386*]

386 LETTERS, or rather, to encourage and exhort. For this is what the ancient enemy of the human race has been accustomed to attack with greater vigor, nefariously trusting that the followers of Christ, with divided minds, will utterly destroy Christ Himself and the work of His redemption; for Christ is not divided in any way, neither in Himself nor in His mystical body. — Therefore, you and other Catholics, who devote yourselves to writing, either daily or at intervals, we are certain that you desire to further our endeavors. To ensure that this happens more effectively and usefully, we earnestly urge you, as well as those with whom you associate, to combine a solid and sincere instruction with prudence, equity, and concord; let the virtues of Lodi guide you, and avoid all that may sow offense or contention, and greatly increase the strength and dignity of those who act with others. Furthermore, such writers must above all respect the authority of the sacred pastors, follow their guidance, and concede to their desires; which, beloved sons, we rightly commend you for having already done, and we recognize it as a sign of the greater grace that will be bestowed upon your labors, both before God and among men in the future. — We, for our part, must confess that we are deeply moved by affection towards your nation, noble in spirit and deeds, and we never think of it without great desire. Indeed, it comes to mind that it was conquered by Willibrord, a man of apostolic example, consecrated Archbishop of the Frisians by our predecessor, Pope Sergius I, and adorned with the sacred pallium, as a fertile field for Christ, and that he cultivated it for a long time; and that the Catholic Church has always held it most dear, flourishing for many centuries with the integrity of faith and the worthy excellence of its works. But what followed were trials! And what a benevolent kindness of the merciful God towards the Netherlands! It is pleasing to see that, after harsh winters and storms, the light of truth and grace is gradually being restored, and that it increases daily, in justice and in the public order. But you well

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understand, beloved sons, and you yourselves feel, how much remains to be done for the sake of your country and for the sake of Christian charity. Therefore, renewing your efforts under new auspices, persevere in your endeavors, and devote yourselves with zeal, so that all citizens may more widely receive the best fruits of your labor, especially those who dissent from the faith. For this purpose, consider the following:

[*Latin ed. p. 387*]

LETTERS 587 of documents, may your studies not be so much about refuting and overcoming adversaries, as about brothers and sisters, to whom you look with a single gaze of charity, guiding them to the truth, protecting them from error, and leading them back into the bosom of the same Mother Church. — May God, as we earnestly pray, inspire you and grant you continuous help; and receive this pledge in the Apostolic blessing which we impart to each of you with abundant charity. Given in Rome, near Saint Peter, on the fifteenth of December, in the eighteenth year of Our Pontificate. LEO XIII. -raS-i.0-l.ri5g— FROM THE HOLY CONGREGATION OF THE COUNCIL VASTEN. OF MARRIAGE. June 23, 1895. Section 24, chapter 5, concerning reforms in marriage. SUMMARY OF THE CASE. Maria Florentia Ranieri, a young woman from the parish of Vastena in the Diocese of Lodi, aged 22, having been captivated by love for a young man named Anthony Di Matteo, and after vehement courtship, they seemed to have mutually promised a future marriage. However, the girl's father so opposed this love that, at her father's command, she entered into a betrothal with a young man named Florintho Cericola, also from the same diocese, who was 16 years old, and it is established that this betrothal was entered into with the will of the parents. After the betrothal with Florintho, the love between Maria and Anthony grew so much that there was fear that Maria would be taken away by Anthony to contract marriage. Therefore, the parents, in order to prevent such a danger, decided that Maria and Florintho should immediately enter into marriage before the Church, with the condition that, after the celebration of the religious marriage, the spouses should remain separated, each with their own family, until the celebration of the marriage, as...

[*Latin ed. p. 388*]

388. FASTEN. They say that it was a civil marriage, because it could not be celebrated at that time due to Florinthus's lack of age. Therefore, with the Curia agreeing to this condition, Florinthus Cericola and Maria Ranieri were lawfully joined in marriage on February 18, 1888, in the parish church of the place, and immediately afterwards, they willingly returned to their respective paternal homes. However, Maria, her mind unchanged after the marriage, on May 22 of the same year, abandoned her parents and eloped with Anthony, leading an immoral life with him. In March

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1889, she gave birth to a daughter, and on December 27, 1890, she did not hesitate to bind herself to him in a nefarious union, strengthening the civil bond. Then, seeking solace for her miserable condition, the unfortunate Florinthus sent a suppliant letter to the Archbishop of Teate, the administrator of the Diocese of Vast, in which he recounted that the marriage was null because of the lack of consent on the part of the bride, and that it certainly remained unconsummated, and therefore, with fervent prayers, he begged the Prelate to take care that a canonical process be carried out on both matters. The Archbishop immediately established a tribunal on December 18, 1891, and, using his own authority, demanded not only that the cause of validity be investigated, but also that an inquiry be made into the alleged unconsummation of the marriage. Therefore, after the completion of the process, the delegated judge pronounced the following sentence in July 1892: "We declare, pronounce, and definitively sentence that the marriage begun... is valid and ratified; that this marriage, however, is valid and ratified only, and not consummated, etc." From this sentence, the defender of the sacrament appealed to maintain the indissolubility of the sacramental bond, and at the same time, both parties appealed to obtain a sentence of nullity, which the Episcopal Curia did not allow. The theologian, presenting the case in a synoptic manner, argued that the Episcopal Curia should legally uphold the sentence of nullity.

[*Latin ed. p. 389*]

VASTEN. 389, and for this reason, did not permit it; for that reverential fear, by which the woman is said to have been compelled to enter into marriage with Florintho, and if it was present, it was certainly not of such a nature as to fall upon a steadfast man, as would be necessary in order to render the marriage null. It is known that the Sacred Congregation follows this doctrine in practice and in external matters, concerning reverential fear, such as the father's indignation, neither retaining the girl, as a grave evil, unless there are added quarrels, or threats, or some blows, or at least importunate and insistent prayers: but none of these things, in the case under consideration, occurred, as the records of the process demonstrate; therefore, the reverential fear, if it was present in the case, was certainly not of such a nature as to render the marriage null. This is indeed confirmed by the testimonies of the witnesses, from which it results that: 1° the girl did not speak to her father, even once, directly, about this marriage, but only to her mother and her grandfather; 2° the father said only this, in relation to this marriage, namely: "Let us see if my will, or the will of my daughter, will be done": these words, certainly, by themselves, and without any added threats, do not imply moral coercion, nor do they induce grave fear; 3° the father, although severe, was not considered by anyone to be violent; 4° the daughter herself could have averted this evil, by openly manifesting her will, not before her mother and grandfather, but before her

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father himself, who, in the end, believed that his daughter had voluntarily consented. Therefore, the reverential fear in the case, at least, should be considered doubtful, and therefore insufficient to render the marriage null in external matters. However, it is clearly established that, even if truly valid, the marriage in this case was not truly consummated. This, indeed, can be demonstrated in a few words, namely: that the parties, otherwise religious, assert the sanctity of their oaths; that the witnesses testify under oath, without any exception; that the circumstances and details confirm this; all of which reasons suggest that it should be considered morally certain; but these things all occurred between the parties.

[*Latin ed. p. 390*]

390. FASTING. Florinthus of Cericola, and Mary of Florence, demonstrate that the marriage between them was not consummated; therefore, such a lack of consummation must be considered morally certain. The major proposition does not require demonstration; for whenever physical certainty, which is derived from bodily examination, cannot be obtained, recourse must be had to moral certainty, and this is sufficient. Indeed, both law and the Doctors, but also the very practice of the Sacred Congregation, demonstrate this most clearly. But it is a very clear thing that the fullest moral certainty arises from the oath of religious persons, from the testimonies of the most serious witnesses under oath, and from special circumstances and additions, so much so that it is proven by its very explanation. Therefore, it remains to demonstrate the minor proposition, in which it is asserted that the marriage between Florinthus and Mary was not consummated. And indeed, to prove this, an oath is presented from the parties, of whose veracity not one witness is found who does not give complete testimony. Moreover, these witnesses are clearly shown to excel in religion and virtue, from their very responses. For it will be evident to the reader that they recognized the gravity of the matter, and the sanctity of the oath they took, and that they spoke with all sincerity and simplicity. They are not citizens of a great city, but simple townsfolk and farmers, who spoke the truth before God. The purity of their minds is seen in their very speech, and conscientious language is evident in each word. Therefore, since the veracity of the parties is fully established, an undeniable argument arises regarding the lack of consummation, which the parties denied by oath. And not only that; the witnesses not only give complete testimony regarding the veracity of the parties; but they also assert the very fact of the lack of consummation, and that in such words that no doubt can arise. Surely, it is not unknown that the fact of the lack of consummation is inevitably proven when it is demonstrated that the spouses were never together alone with each other: but the witnesses, with one voice, assert

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that the spouses were never alone with each other.

[*Latin ed. p. 391*]

FASTING. 391 days: therefore, their testimony most clearly demonstrates that the marriage was not consummated. Perhaps, he argues, it might be asked, how the witnesses knew that the spouses had never been alone together. But he anticipates this objection, noting that the witnesses did not live in a large city, but in a small town, where everyone knows what each person does. The homes of several witnesses were very close to the woman's home, and they all testify that whenever Florinthus went to the woman's house, he was always talking to her in the presence of others, and it never happened that he and she were left alone in the house. Therefore, the witnesses are not testifying based on hearsay, but on what they saw. Furthermore, he believes it should be added that all the witnesses, both for the man and for the woman, testify the same thing, including those who, in some way, had arranged the marriage, and who, therefore, would have had an interest in the marriage being both valid and consummated. It should not be thought that it was possible for the parents to ever have left the woman alone with her husband; for, since they feared that she might elope with Di Matteo, it is clear from the records that they never left her alone, either at home or elsewhere. And if anyone should wonder why the man never forced the woman to have marital relations, and why the woman never asked the man to be alone with her, let him know that 1° the marriage was contracted under a law that stipulated that it should not be consummated until after the civil formalities were completed; 2° this promise was made by religious and pious people; 3° Florinthus was a young man of the most honest character, and extremely modest, and moreover, completely ignorant of marital duties; 4° finally, the woman was completely and always averse to Florinthus, having been captivated by love for Anthony Di Matteo, with whom she eventually eloped, and with whom she also entered into a civil marriage. Therefore, he asks, even if it could have happened in some way that the man asked the woman to give him a small gift, which, however, must be denied, how could they have been left alone? "What would an ignorant young man have asked for? And what would a woman who was already planning to elope have wanted?"

[*Latin ed. p. 392*]

592. FASTING. It is reported that Anthony Di Matteo was present, and the question arises, why would he have wished to establish a closer relationship with Florintho? And this, indeed, is under the hypothesis that they remained alone. But the witnesses completely exclude this. And it should be noted, Most Wise Judges, that the witnesses spoke from the innermost conviction of their minds, knowing that what they asserted was absolutely true. And indeed, since both the man and the woman testified

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before the Tribunal that the woman had never entered Florintho's house, the witnesses denied this, asserting that, in truth, the woman had visited Florintho's house on one occasion, although they also exclude the possibility that they remained alone on that occasion, and indeed they admit that they did not remain alone. How, therefore, can there be any doubt about the fact that they assert, when it is not a matter of consummation, and when they even give testimony against the parties in some respects, and reveal the truth of the facts? These matters are so serious that it becomes useless to discuss the details and circumstances further. For, from the very testimonies of the witnesses, the multitude of details and circumstances becomes clear. From this, it is clear that Mary Florentia Ranieri never pursued Florintho Cericola with true love; it is clear that a marriage was arranged, unknown to the parties; it is clear that the betrothal and marriage never took place in such a way that the woman forgot Anthony Di Matteo; indeed, after the betrothal and after the marriage with Florintho, a stronger flame was kindled between Anthony and the woman. Hence, the parents' fear and vigilance lest something serious should happen; hence, the woman's aversion, who never acknowledged Florintho as her own husband; hence, finally, the sudden flight, and the celebrated civil marriage with Anthony. All of these things, if considered together, if compared with the oaths of the parties and the testimonies of the witnesses, and if it is noted that both the witnesses and the parties, at least Florintho, are persons of the utmost honesty and piety, and indeed without any exception, the moral certainty that arises from this is that the marriage was not consummated. Given this situation, with the aversion of the hearts, and the fact of the celebrated civil marriage between...

[*Latin ed. p. 393*]

CASE 393: Mariam Florentiam, wife of Ranieri, and Antonium Di Matteo, are presented for consideration regarding a dispensation from a marriage that was consummated but is now in question.

OPINION OF THE CANONIST: The canonist observes, first, that the process, although it appears to follow the proper legal form in other respects, is infected with two defects. The nullity of the marriage was sought because Mariam Florentiam was compelled by her father, under the influence of reverential fear, to marry Florintho. Furthermore, it is the established law that in such cases, the nullity of the marriage can only be inquired into at the request of the party who experienced the fear; therefore, Florintho, as the plaintiff, lacked the necessary legal standing. To demonstrate this, setting aside the authority of canonists, he cites passages from the Instruction of the Sacred Congregation of Holy Orders, dated June 20, 1883, title 6, article 3, which reads as follows: "Regarding the impediment of violence and fear, it must be noted first that no one is admitted by law to challenge a marriage on this ground, unless he claims to have suffered

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violence and coercion." The second defect lies in the fact that the process concerning the marriage was initiated without the knowledge and consent of the Holy See; which, however, could not have been done. This matter is also well-known, and does not require lengthy demonstration, and is confirmed by a recent response from the Sacred Congregation given in Varsavia on June 16, 1894, regarding question 2, in which it was declared that it is not permissible for Bishops, without special permission from the Sacred Congregation for each individual case, to accept a petition and initiate a process in order to grant a dispensation concerning a marriage that is only valid. From these points, the canonist concludes that the Archbishop of Teatinum, either because of the lack of legal standing of the plaintiff, or because of a defect in jurisdiction, could not have accepted Florintho's petition, and therefore, the case was valid in neither respect. However, since the woman at least implicitly makes the man's petition her own, and since there are examples of benevolent remedies granted by the Sacred Office, especially concerning this second defect, and since the process can be proven in other respects, he believes that leniency should be exercised, so that, with the matter prolonged further, provision may not be delayed for the miserable condition, especially of the innocent party.

[*Latin ed. p. 394*]

394. FASTING. After addressing the question of the validity of marriage, he begins by stating that the matter in question concerns a purely reverential fear, and therefore it must be inquired not only whether true fear actually existed, but also whether threats were added to it, or at least persistent prayers or importunate persuasions, which, when joined to the reverence due to the father, could constitute a grave evil and be sufficient to extort consent. Indeed, Engel, in his *Commentaria* on title concerning espousals and marriage, § 5, n. 4, writes: "That reverential fear cannot be vaguely alleged for any command, otherwise there would be no place for a valid contract... In the presence of parents, if any pretext were allowed based on the tension of reverence... But if, besides reverence, other aids are present, from which it can be inferred that someone was truly unwilling, such as dangerous threats, importunate persuasions, and, as I would say, if a modest contradiction availed nothing, then this reverential fear must also be considered a just cause for nullity." Similarly, Sánchez teaches in book 4, disputation 6, n. 7: "The ultimate opinion, which I consider to be much truer, teaches that purely reverential fear does not invalidate the marriage of a steadfast man, and therefore does not annul the marriage." These views are supported by Doctors of greater renown, such as Reiffenstuel in book 3, title 41, on regulations and transumptions, n. 165, Schmalzgrueber in volume 4, page 1, title 1, n. 432, the *Clericatus* decree of December 27, n. 34 on marriage, Pignatelli, and more recent authors, as can be seen in Santi, *Praeludia Iuris Canonici* IV, 1, n. 144, and Gasparri, *De Matrimonio*

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volume 2, chapter V, § 815, who furthermore teach that this doctrine is admitted in practice by the Sacred Congregation of the Council. Indeed, in the matter at hand, it is not at all evident from the testimonies that the father used harshness, threats, or violent reprimands to compel Mary of Mineo to enter into marriage with Florintho; but rather, these things are not entirely excluded from the context of the narrative, nor from the character of the father, who was neither excessively harsh nor prone to anger. Furthermore, it must be held that there were no importunate persuasions or prayers, since the witnesses are equally silent about these matters, nor can they be easily believed from other sources.

[*Latin ed. p. 395*]

SECTION 395, especially concerning those who resided in the same house, concealed such an importunity. Therefore, it is considered that the father clearly demonstrated his will regarding the daughter entering into marriage, in order that her good might be promoted; but, as he himself stated, the limits of parental persuasion were not exceeded. With these things before us, it does not seem that a great difficulty can be derived from what Mary of Florence and the witness Aloisia Impicciatore testified before the judge. Furthermore, since it is clear from the testimony of many that the bride's mother, contrary to the opinion of the rest of the family, was displeased with the marriage of her daughter with Cericola, and Aloisia Impicciatore, speaking from what she heard from Berenice, the bride's sister, it should be noted that their words do not at all suggest the weight of fear, but rather reveal a certain aversion that Mary of Florence felt towards the proposed marriage, which differs greatly from a coerced consent. Moreover, if these and other things that it would be permissible to adduce, stemming from the affection that Mary of Florence felt for Anthony Di Matteo, with whom she was subsequently joined in a civil union, still seem to offer some doubt, it must be considered that the marriage was valid and, therefore, its validity must be maintained, "unless evident reasons demonstrate its nullity." (Instruction of the Holy See on Matrimonial Causes, art. III, n. 40). Having stated these things, it is considered that the first question should be answered: It is not established that the marriage is null. Or, if it is preferred: Provision will be made in the second [section]. Proceeding to the other point of contention, it is recalled that, as is commonly known in law, in order to obtain a dispensation from a ratified marriage, two things must be demonstrated: namely, that the marriage remained unconsummated, and that there are reasons that can move the Supreme Prince to grant the dispensation. But with regard to unconsummation, since physical arguments derived from the examination of the woman's body cannot be available, we must consider what Sánchez De Matrim. teaches in book 2, dispute 23, n. 1: "If the bride was not a virgin, nor was the bridegroom's house given to her, the testimony of witnesses

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is used, since proof cannot be obtained from appearances."

[*Latin ed. p. 396*]

396. FASTING. Furthermore, after having taken an oath, each spouse testified that they had never consummated the marriage, nor had they ever been together alone, just the two of them. Indeed, when the judge inquired, "Whether, after the celebration of the marriage, you have consummated it," the man replied, "No, as I have explained up to now," and Maria Florentia confirmed the same. This kind of confession is fully corroborated by the testimony of seven witnesses. All the witnesses present unanimously, having observed the piety of Florinthus and the truthfulness of Maria Florentia, declared that they believed it was necessary to add their testimony, and they stated, from their own knowledge, that it seemed almost impossible that the spouses would have indulged in marital relations. Indeed, as Cosci writes in *De separ. tor.*, book 3, chapter 2, paragraph 136, "When, in this matter, the testimony of seven witnesses, relatives or neighbors from each side of the spouses, is added, who, if they affirm that they firmly believe the spouses' confession to be true, and that they have such a clear conscience that they are incapable of uttering a lie or perjury, they remove any suspicion of collusion and falsehood... their testimony is sufficient to be given credence by the spouses." This doctrine has been observed by the Sacred Congregation in cases of cohabitation and sleeping together, as seen in the decrees of Regien. of June 27, 1891, Mileten. of September 12, 1841, Engolismen. of December 12, 1891, and others. Furthermore, certain details must be considered, which seem to induce moral certainty regarding the lack of consummation of the marriage. First of all, the man's age and character must be considered, which the witnesses unanimously assert to be timid and modest, and also the woman's affection for Anthony Di Matteo, with whom she had already planned to elope. It is also noted that the houses in which the spouses lived were separated by a distance of more than two kilometers, and that the family to which the woman belonged consisted of more than twenty people, so that they could not have met frequently, let alone eluded the vigilance of many people. These facts are reported by all the witnesses, and there is no apparent reason to deny full credence to their statements.

[*Latin ed. p. 397*]

FASTING. 397. Nor should it be stated that the spouses, when affirming before the judge of marriage that there was no consummation, also added that Mary Florentia never entered the house of the husband; whereas, on the contrary, some of the witnesses confess that she came twice to the fields of Florentius, accompanied by her mother and other family members, to work, and that she entered his house at the appointed hour to eat, remaining there with the other workers. If the witnesses who heard the

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testimonies of the spouses mentioned such circumstances, and therefore claim greater credibility, they also stated that Mary Florentia, on several occasions, did not go to the husband's fields to work with him, but feigned illness, and that she only went there twice, but never in the presence of a large group, nor did she remain alone with the husband, so that even those who were present and never took their eyes off her can testify to her aversion towards the husband, and thus exclude any suspicion of consummation of the marriage. Furthermore, if the credibility of the spouses' testimonies is to be questioned, it does not seem that there are reasons lacking by which the signs of falsehood and perjury can be removed. First of all, it must be considered that the same spouses were questioned about the lack of consummation, and their purpose was to assert that there was none, and therefore, the words spoken by them should be understood, with careful consideration of the context, in such a way that they mean that the woman never entered the house of the bridegroom for the purpose of cohabitation or of performing marital acts. Moreover, it can be held, without impropriety, that if a woman entered the house of the husband for a short time to eat with others, that this may have escaped their memory, or that they may have been mistaken in affirming that the bride never entered the husband's house to see him. Furthermore, since there is sufficient and ample evidence from the above-mentioned sources of their veracity, it would seem prudent to interpret the words spoken in such a way that their reputation remains intact, before accusing them of the most serious crime. Having stated the matter concerning the lack of consummation, and having mentioned a few of the causes for dispensations, it is said that it is common among...

[*Latin ed. p. 398*]

598. FASTEN. Doctors, among the legitimate causes for granting a dispensation, have raised doubts concerning the validity of marriage, as seen in Ursaya, vol. 3, p. 2, disp. 21, no. 104; Cosci, *De separatorum*, book 3, chapter 2, no. 386; concerning the danger to the soul, Sánchez, book 12, disp. 16, no. 19; Fagnanus, in chapter *Verum*, no. 11, *De conventione coniugum*; concerning the fear of scandal and its proper reparation, Sánchez, *ibid.*; concerning aversion of souls, and the absence of any hope of restoring peace, Cosci, *loc. cit.*, book 3, chapter 2, no. 95; and finally, from the practice of the Sacred Congregation, a civil action having been initiated with another party. Furthermore, it is clear that none of these causes are present in this case. For although the nullity of the marriage contracted between Florinthus and Mariam in Florentia has not been proven, it cannot be denied that some doubt, however slight, may remain concerning it. Moreover, it is entirely impossible, whether due to mutual aversion of souls, or due to a civil law prescribing such a thing, that reconciliation and cohabitation between the spouses can occur. Therefore, in order that the

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scandal may not persist longer, and that both betrothed may not be led to the ultimate detriment of their souls, it is advisable to seek a dispensation benevolently from the Most Holy [authority] concerning the marriage which is valid but not consummated.

OBSERVATIONS OF THE DEFENDER OF THE HOLY OFFICE. The Defender, having been informed that Florinthus of Cericola declares the marriage bond entered into with Florentia to be invalid, alleging that Florentia was forced by her father into the marriage, and that the marriage was imperfectly consummated, adds that it is superfluous to speak of the alleged nullity of the marriage. For the judge of Fasten, and the most learned theological and canon law consultants, consider it to be among fables. However, concerning the non-consummation of the marriage, admitted by the judge of Fasten and by the consultants, he observes that it cannot be proven, since the investigation instituted concerning the nullity is, as a learned canon law consultant demonstrates, riddled with flaws. Indeed, even if the strength of the law were to be added by the evidence collected through the aforementioned investigation, the legal proof of the non-consummation of the marriage is by no means present.

[*Latin ed. p. 399*]

Vasten. 599 is the number. Indeed, he himself states that he came to Florentia and Florence for at least three months, that is, from the beginning of the marriage until the time that Florentia, together with Anthony Di Matteo, fled from Florentia, and he was never alone with her.

Now, "This proof," (says Coscius, *de separ.*, lib. 1, cap. 16, n. 11 and following), "can be provided by witnesses who testify that the spouses, after the marriage, never came together in the same place, or at least, that they always remained in the presence of other people, and that these people saw them separate, and that they never lived together under the same roof, or even entered a bedroom with closed doors, and that they did not linger there for any length of time."

Furthermore: Florinthus confesses: "After the betrothal, I visited the bride's family, which consisted of about twenty-five people, especially on holidays... After the marriage, I continued to maintain the same relationships in the bride's house as I had after the betrothal."

But it is neither likely nor proven that Florinthus and Florentia, with these frequent greetings and visits, never once were without witnesses and arbiters. Nor is much trust to be placed in the oath of spouses, since those who are most skilled in lying are often the best witnesses.

Furthermore, Florinthus swears: "I never spoke with my bride alone; and she herself never even set foot in my house."

Similarly, Florentia swears: "After the celebration of the marriage, I never entered Florinthus's house."

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But, on the contrary, Vincent Cericola, Florinthus's brother, testifies: "Florentia came twice with others from the family to their fields to help with the work, and she set foot in their house."

This very thing is testified to by Oamillus Cericola, Florinthus's father.

These two are corroborated by Lelius Ranieri, Palma Cericola, and Aloisia Impicciatore.

With all of these things stated, the points to be clarified are these.

[*Latin ed. p. 400*]

400 FASTEN. Doubts. I. Whether the judgment of the Curia Vasten, concerning the validity of the marriage, should be confirmed or rejected in this case? And, to the extent that it should be confirmed, II. Whether it is necessary to consult with the Most Holy Congregation for a dispensation from a valid but unconsummated marriage in this case? RESOLUTIONS. After thoroughly considering all matters in plenary sessions on June 22, 1895, the Council decided to answer the following doubts as follows: To I: The judgment is to be confirmed. To II: If necessary, by correcting the proceedings, affirmative. FROM WHICH THESE ARE GATHERED: I. The due reverence owed to superiors cannot be alleged in a vague and indiscriminate manner, otherwise there would be no basis for a valid contract in the presence of parents, if any objection were granted based on undue deference. II. The reverential fear falls only on a steadfast man, and therefore does not invalidate the marriage, when, on the part of the father or mother, either quarrels, or threats, or even blows, or at least importunate and insistent prayers are added. III. In this case, the marriage was validly contracted, because it does not appear from the records that the father used violence, threats, or violent reprimands to compel Florence to enter into marriage with Florintho. IV. Regarding the impediment of force and fear, no one is admitted to challenge the right to marry under this heading, unless it is proven that he suffered violence and coercion. V. It is not permissible for Bishops, without special permission from the Sacred Congregation for each individual case, to receive a petition and initiate proceedings in order to obtain a dispensation from the Most Holy Congregation concerning only the validity of the marriage. VI. When both spouses have sworn under oath that they have never consummated the marriage, if the bride is not a virgin, nor has the bridegroom received the bride's dowry in Tarifa.

[*Latin ed. p. 401*]

401. FASTING. It is necessary that those involved should apply their faith, even if it cannot be proven outwardly. VII. And this is even more so if witnesses from both sides of the marriage are brought in, and, with the addition of an oath, they affirm that they firmly believe the confession of the spouses to be true, and that they have such a clear conscience that they are incapable of uttering a lie or perjury. VIII. Among the legitimate causes for

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dispensing with a marriage and questioning its validity are: danger to the soul; fear of scandal and its proper reparation; aversion of the souls, and no hope of restoring peace; and finally, from the practice of the Holy Office, the commencement of a civil action with another. VIGILIENSIS. BENEFICIAL RIGHTS. On July 23, 1895. Council of Trent, Session 24, chapter 18, concerning reforms. Since the position of Theologian in the cathedral church of the city of Vigiliensis had been vacant since February of the year 1892, the perpetual Apostolic Administrator of that diocese, in accordance with the form of the Pastoral Constitution of Benedict XIII, convened a competition for the position on February 19, 1894. Two candidates presented themselves for examination, namely, the Reverend Angelus Dente, and the Reverend Franciscus Cocola, who were competing in this matter. The first of these was, on the very day designated for the examination, afflicted with a slight illness, so the examination was postponed to the 21st of the month; but the other candidate refused to grant a further postponement; and indeed, he was later seen to strongly suspect the genuineness of this illness, as can be seen from the absence of any mention of it in the records. In truth, on the morning of February 21st, before the ninth hour, the candidates were present at the aforementioned location to undergo the examination. But of the four examiners appointed by the Ordinary, COMPENDIUM OF FACTS. Records, Volume XXVIII, page CCOXXXI. 26.

[*Latin ed. p. 402*]

402. VIGILIEN. Of those elected, only three were present; for the fourth, Francisco Cocola, had been notified by telegram the day before that he would arrive precisely at eleven o'clock in the morning, as indeed transpired. Therefore, the other examiners, having been informed that a fourth examiner would arrive shortly, proposed that they postpone asking the questions until the arrival of the last examiner, just as the last one presented his questions when the appointed hour arrived. However, unfortunately, Angelus Dente, having worked on the task for nearly six hours and having completed two of the four proposed questions, was seized by a fever and was forced to stop and leave the assembly hall, while another candidate completed the assigned task. After the examination was thus concluded, the examiners, properly assembled before the Ordinary, proceeded to evaluate the candidates' work. To Angelus Dente, based on his demonstrated knowledge in the examination, were assigned 7 points; to Francisco Cocola, under the same heading, were assigned 11 points. Then, considering other moral qualities, as is customary, the examiners decided to award Angelus Dente 6 points, and to Francisco Cocola, 3 points. Therefore, summing these points, Angelus Dente obtained a total of 13, and Francisco Cocola obtained a total of 14. Having observed this demonstration of the candidates' suitability, the Ordinary hesitated, considering both the circumstances surrounding the competition and the outcome of the examina-

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tion itself, doubting first whether the competition was valid, and second, if it were valid, to which of the candidates it should be awarded. The reason for the doubt regarding the validity of the competition greatly troubled the mind of the Apostolic Administrator, because the examiners, in proposing questions for examination, had presented a certain criterion that they did not subsequently observe. To resolve this question, the Archbishop appealed to the Sacred Congregation of the Holy Office, and on March 17, 1894, the following decree was issued: "If it is established that neither of the candidates was approved by the examiners, the competition must be renewed; if, on the contrary, the opposite is established, the Ordinary may exercise his right to choose, among those approved, the one whom he judges to be more pleasing to the Lord."

[*Latin ed. p. 403*]

VIGILIENSIS. 403 Subsequently, considering that both examiners had presumably approved, the Apostolic Administrator judged that the theological position should rather be offered to Angelo Dente, because his moral qualities were superior. Therefore, he sent a letter to the Sacred Datary, requesting the issuance of Apostolic letters, for the benefice had indeed been vacant during the papal months, and was reserved to the Holy See; a circumstance which the Ordinary of the Sacred Congregation had omitted to mention. Upon learning of this, Franciscus Cocola appended a note to the records of the Sacred Datary, stating, "Nothing shall pass," believing that an injustice had been done to the other candidate, and demanding that the proceedings of the competition be transmitted to the Sacred Datary in accordance with the provisions of the Constitution of Benedict. Consequently, a question arose regarding jurisdiction; whether indeed the Sacred Datary, or rather this Sacred Congregation, was competent. But after this question was properly raised in the Tribunal of the Sacred Datary, before the Prefect of the office, and the parties agreed that the case should be heard by the Sacred Congregation, the Most Blessed Father, whom we so devoutly await, granting his assent, decreed that the dispute should be settled by the same Sacred Congregation. Franciscus Cocola, through his intermediary, informed the Synoptic Disputation of the following. Indeed, at the outset, he asserts that there were countless and inexplicable irregularities and machinations in the announced competition, and that the first author of these was the priest Tarlizzi, who had previously participated, ostensibly to present documents, and then subsequently renounced his participation in the competition. Furthermore, he contends that the conduct of the Curiae of Trani and Bisceglie demonstrates this. For, if these Curiae were repeatedly invited by the Apostolic Datary to transmit the records of the competition to it, the request was entirely futile and useless. Moreover, the patron argues that Apostolic letters favorable to his client should be

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issued, based on the majority of votes that he claims were given by the examiners. DEFENSE OF FRANCISCI COCOLA.

[*Latin ed. p. 404*]

404. Furthermore, the Advocate continues, it is universally accepted, especially among prudent men, that no judgment can be passed on matters that are unknown. Indeed, here, the question to be investigated is not based on conjecture, but on evidence, from which it must be established that both candidates possess the knowledge with which each should be endowed, so that they may be able to properly fulfill the duties attached to the position. Therefore, regarding the other two candidates, the Examiners could not award any points to the adversary, and for this reason, he could not be included among the approved candidates. The Archbishop could not recommend him to the Apostolic Chamber, since he had not participated in the examination. Moreover, the Advocate points out that the adversary appeared to be suffering only from a fever and illness, and this is confirmed by the testimony of a physician. The Advocate further states that, in order for the Letters Apostolic to be issued in favor of Francis Cocola, the Supreme Pontiff Benedict XIII teaches this. Indeed, in his Pastoral Constitution, he prescribes that the theological chair must be conferred upon: 1° a Doctor in Sacred Theology; 2° someone more suitable, having been declared by the Examiners to be superior in the formal examination; 3° and that whenever the conferral of the chair pertains to the Holy See, the Bishop must transmit the records of the examination to the reigning Supreme Pontiff, so that he may assign and confer the chair to the one whom he judges to be more worthy and more suitable in the Lord. The words are: "But if the Bishop, contrary to the form prescribed in the present Constitution, should presume to confer it, or should neglect to observe the same form in other circumstances, then that conferral, by the very law, shall be null and void, and of no force or effect whatever, and the disposition of that chair shall immediately revert to the Holy See and the reigning Roman Pontiff, to whom a Doctor in Sacred Theology shall be conferred." Furthermore, the Advocate strives to prove this from practice and from the observance of the Apostolic Chamber.

Finally, the Advocate states that this does not prevent the Archbishop from appealing to the Sacred Congregation of the Council, and from granting it the power to choose a Canon Theologian among the approved candidates.

[*Latin ed. p. 405*]

BISCEGLIE. 405 Finally, the accuser notes that his client is indeed endowed with all the necessary qualities. Hence, he recounts that, from the year 1889 until the year 1893, although deprived of his office, he diligently fulfilled the duties entrusted to him in the collegiate church of

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Saints Matthew and Nicholas in Bisceglie; so much so that, being absent from his city, he meticulously fulfilled the customary Mass schedule as a canon of the aforementioned collegiate church, through another, who participated in the customary distributions. Furthermore, he observes that the client, being a Doctor of Sacred Theology and of Human Letters, always maintained an impeccable way of life, and that he served as a confessor to both sexes, dedicating himself diligently to the preaching of the Word of God without any recompense. When he exercised the office of professor in the seminary of Frascati and in the college commonly known as di Mondragone, and currently holds the aforementioned office, the Bishop of Frascati commends him in the highest terms. The Archbishop of Rossano, the orator continues, of the same city of Bisceglie, expresses in clear terms his esteem for the Reverend Francis. The same Archbishop, as Rector of the seminary of Bisceglie, commends him with a testimony of praise for his unsparing instruction; the same is done by the Rector of the college, commonly known as di Mondragone.

DEFENSE OF ANGEL DENTE. But, on the contrary, the following should be noted regarding the favor of Angel Dente. He presented observations in the writings of the Doctor, almost denying the illness with which he claims to have been afflicted through deceit. Then, the Priest Dente noted that, although the illness was not serious, but rather slight, it was nonetheless proper for the Bishop to postpone the term of the competition, which he proves through several authorities taken from Lucio Ferrari, *Prompta Bibliotheca*, vol. 2, the word ″competition,″ article 2, number 2, marginals 61-62. Furthermore, it was noted in favor of the held competition and the election that took place, because, in the first place, his own acts should be considered valid, because although Angel Dente did not satisfy all the questions, nevertheless they should be held in high regard.

[*Latin ed. p. 406*]

406 VIGILIEN. The answers given, which, according to the judgment of the examiners, can earn so many points that the candidate is considered among the approved, are of greater value. For it is worse to answer some of the questions in such a way as to be filled with errors, than to leave the same questions unanswered: for it is more serious to assert something false or erroneous as true, than to frankly admit that one is unable, without the aid of approved authors, to resolve a particular question. However, in the present case, we are not dealing with confessed ignorance, but with a legitimate, or at least probable, impediment to answering all the questions. Thus, Angelus Dente was able to be approved based on having answered only two questions. For this purpose, namely, with regard to the formalities and prescriptions to be observed in the examinations, it should be noted that the same requirements are not necessary for the examinations for the

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Theologal and Penitential positions as are required for the examinations for parochial positions; therefore, the examinations for the Theologal and Penitential positions should be judged with leniency. Thus, it is reasoned from the resolutions of the Sacred Congregation, as found in the collection of Pallottini, Vol. 6, page 555, § 347: "Although the Pastoral Constitution of Benedict XIII equates the collation of a Theologal and Penitential Canonry with the collation of a parochial Church, nevertheless, it establishes nothing regarding the manner of the examination: in Alerien, Canon of Penitential matters, on April 19, 1777, § 348. Therefore, whatever may be the disposition of the Encyclical Letter of the Sacred Congregation concerning the examinations for parochial positions, published in the year 1721, this, like other regulations for parishes, does not claim any validity in the examination for a Theologal position, etc." Finally, the fact that the Bishop judged Angelus Dente to be more suitable than Francisco Cocola, who had obtained one point more, does not seem to invalidate the election. For first, the Bishop gives the reason that he preferred Angelus because he had twice as many votes for moral qualities than the other; and secondly, with respect to knowledge, or regarding the two questions answered, he had obtained comparatively more points of approval than the other. There is no doubt that the Ordinary is not bound to...

[*Latin ed. p. 407*]

VIGILIEN. 407 states that, among those presenting themselves, the one who is declared more suitable by the examiners should be appointed, but that the one who is more suitable among those approved by the examiners in the Lord should be appointed. — Indeed, the Constitution of Benedict XIII, *Pastoralis officii*, decrees that benefices should be conferred "upon the more suitable one, in a formal competition, after the examiners have renounced him, in exactly the same way as parish churches are conferred." Therefore, just as in the competition for parish churches, the choice of the more worthy or suitable one among those approved belongs to the Bishop or the collator, and not to the examiners. Cardinal Paulut explains this in the same way in Riganti, *De reg.* 1, Cancell. § 10, no. 31: "Because he who does not have the power to indicate a competition, cannot choose the more suitable one, since this choice is an integral part and, as it were, the conclusion of the entire competition, which the Council of Trent grants only to those who have the right to complete the competition, as has been stated elsewhere by the Sacred Congregation of Councils on December 1, 1608." The Sacred Congregation of Councils has often confirmed this. Thus, in the competition in Urbisvetera on July 11, 1846, when the Bishop elected a Canon Theologian who had received a smaller number of votes, in response to the proposed question: - Whether and how it can be determined that the Bishop made an unreasonable judgment in the election of the Canon Theologian in this case. The Sacred Congregation of Councils

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responded: "No, and moreover." - Especially noteworthy is the response given in the Theological and Penitential Competition in Aversa on November 21, 1829; for, in response to the doctrinal question: - Whether the Bishop is legally empowered to choose for a theological and penitential benefice the one whom he himself judges to be more worthy among those approved in a formal competition, or rather, whether he is obliged to choose the one whom the examiners have declared to be more suitable in the same competition - the Sacred Congregation of Councils responded: "Affirmatively to the first part, negatively to the second part." Finally, for the sake of truth and justice, it should be noted that the election made by the Bishop appears to be subject to nullity by defect, because the Bishop himself chose, when it is expressly stated that...

[*Latin ed. p. 408*]

408 VIGILIEN. From the Pastoral Office of the Benedictine Constitution, concerning those benefices reserved to the Holy See, so that the election is not made by the Bishop, but by the Supreme Pontiff in Rome, to whom, therefore, the acts of the competition must be transmitted; and in the words: "Whenever the collation of a benefice pertains to the Holy See, the Bishop is bound to transmit the acts of the competition to the Roman Pontiff, for the time being in existence, so that he himself may assign and confer the benefice to him whom he judges more worthy and more suitable in the Lord among the others." With these considerations in mind, the doubt to be resolved was: Whether and to whose favor the Apostolic Letters should be addressed in this case. RESOLUTION. The Holy Congregation, after deliberation on July 20, 1895, decided to respond: A new competition shall be held, with all legally required procedures strictly observed, and the acts of the competition shall be transmitted to the Apostolic Datary. FROM THE HOLY CONGREGATION FOR BISHOPS AND REGULAR CANONS, CONCERNING THE REDUCTION OF PENSIONS. Dated April 22, 1895. SUMMARY OF THE FACTS. Rome. The Chapter of the Vatican, in session on August 26, 1894, upon the report of one of the Major Camerlarios concerning the consequences arising from the new law of July 22, 1894, commonly known as "financial provisions," by virtue of which, beginning in July of the same year, the so-called tax on movable property was increased from 13.20 to 20 for every hundred, decreed, according to the common and known legal procedures and the Decree *Cum Nuperrimis* issued by the Holy Congregation for Bishops and Regular Canons, dated...

[*Latin ed. p. 409*]

ROME, January 28, 1871: So that henceforth each beneficiary might be able to retain 7 for each hundred in the respective pensions, in any pension accruing, beginning with the month of July of the aforementioned year, with the exception only for the month of September of that year, in which

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case, since the said tax would apply only to the quarter, the retention must be made in 3.50 for each hundred. The reason for this provision was that, due to the increase in the tax by the new law to 20% of the capital income, beginning in July of that year, those with accounts exceeding 38,000 suffered a diminution, so that the annual income of each Canon would be reduced by 700, the income of Beneficiaries by 350, and the income of Clerics Beneficiaries by 175. Against this decree, recourse was made to the Most Holy Congregation of the Eastern Churches and Regular Canons, first by the Most Reverend Constantinus Contini Riccardi, who enjoys an annual pension of 500, derived from a benefice held by the Reverend Father Albertazzi in the Basilica Vaticana, and then by Johannes Magnanigo, who has an annual pension of 200 on a canonry in the aforementioned Basilica, currently held by the Most Reverend Father Carini, and formerly by the Most Reverend Father Felice Cavagnis, requesting that they be paid their said pensions in full, without any consideration being given to the aforementioned retention. After hearing these appeals, concerning the first, those who had an interest; concerning the second, the Chapter canonically convened, and by secret votes, the Reverend Archpriest of the aforementioned Basilica, on October 1 of the preceding year, wrote that the Decree *Cum Nuperrimis* must undoubtedly be applied to the new increase in the tax, to pensions already existing at the time the law came into effect; he declares, however, that pensions imposed after said law, or to be imposed in the future, should be exempt from said increase in the tax of 7%. Subsequently, the deductions, both from the part of the Reverend Father Magnanigo, and from the part of the Reverend Chapter of the Vatican, were ordered to be presented in the plenary session of the Most Reverend Fathers, so that this decision, having been issued, might be submitted for approval to the Most Holy Lord Pope, or for reconsideration.

[*Latin ed. p. 410*]

410 ROMA. Disceptatio Synoptica. Sacerdos Magnanigo praemittit quod taxarum augmentum non est 7°, sed potius 6,80°, unde miratur quomodo Capitulum Vaticanum sibi vindicare velit 20 centesimos in singulis centenis, cum nulla ratio sibi subesse videatur ad huiusmodi augmentum, etsi tenue comprobandum. Hoc praemissum, sustinet decretum *Cum Nuperrimis* applicandum esse illis Capitulis, quorum reditus ob rerum vicissitudines non modicam passi fuerint diminutionem, non vero Capitulis quorum reditus ex novis superventis circumstantiis aucti sunt; hoc et spiritus ipsius Decreti et aequitas suggerit. Atqui, subdit sacerdos Magnanigo, in hoc praecise secundo casu versatur Capitulum Vaticanum: et probare intendit comparando reditus ante annum 1870 cum reditibus a Capitulo perceptis post conversionis legem, ex qua comparatione, omnibus oneribus deductis, resultat singulos canonicos lucrari menstruas 2000 libellas. Hinc concludit locum non esse in themate applicationi Decreti *Cum Nuper-

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rimis*, sed sibi pensionem integre esse solvendam: aut si Sacra Congregatio expediens non putet hanc quaestionem dirimere dictum statuendo principium, saltem rogat ut det rescriptum: Dilata quaestione super merito, interim integrae solvantur Oratori ratae pensiones decurrendae.

RATIONES REVERENDISSIMI CAPITULI VATICANI. Rmi Capitulares Vaticani ex adverso contendunt in primis retentionem faciendam super pensionibus non debere desumi a differentia inter veterem et novam legem taxam augentem ad 6,80°, sed potius esse commensurandam damno quod Capitulum ex praecitata nova lege 22 Iulii 1894 passum est. Age vero, pergunt Capitulares, juxta rationes exhibitas a Rmo Cancello Camerario, damnum quod Administratio Capitularis patitur ex taxarum augmento ascendit ad libellas 39.065,42: proinde diminutio reditus canonicalis pro quolibet canonico est...

RATIONES SACERDOTIS MAGNANIGO: 0 0 0

[*Latin ed. p. 411*]

ROME, 411, concerning wars, 700,70, or 7%, regarding unpurified revenues, 10,000 documents, which constitute the canonical quota. Having demonstrated the reasonableness of the 7% retention, the Capitulars argue that the opposing party incorrectly asserts that, for the application of the Decree *Cum Nuperrimis*, a not insignificant diminution of revenues must occur due to the difference between the revenues received before the year 1870 and the subsequent revenues, or those received after that year. They utterly reject this interpretation, because from the very text of the decree, from the authority of recent canonists, and even from those who participated in the compilation of the decree itself, it is manifestly clear that a not insignificant diminution must be deducted by comparing the revenue at the time when the canon obtained his canonry and the pension assigned to him, with the current revenue. However, the facts are as follows, the Capitulars state, that by comparing the presumed revenue of the year 1894, in the amount of 10,000, with the revenue that the Canon of the Vatican held in the year 1889, when he obtained it, the late Monsignor Carini, to whom a pension was assigned, a difference of 1,485.91 is observed. And that this difference constitutes a not insignificant diminution of revenues is demonstrated by the decisions of the Holy Congregation of Bishops and Regular Canons of December 21, 1878, in which it was declared that for the Canons of the Vatican, a not insignificant diminution of 423.32 was observed in the year 1871; 437.26 in the year 1872; 1,025.08 in the year 1873; and 275.16 in the year 1874; hence, according to the average of the four-year period, a not insignificant diminution was recognized in the amount of 540.20. Therefore, the Capitulars conclude that the deductions made to the pension of Monsignor Magnanigo must be considered of no value, and

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that the application of the Decree *Cum Nuperrimis* for the 7% retention is rightfully and justly due.

OBSERVATIONS *EX OFFICIO*. The Reverend Advocate Summista states that, in order to determine the degree of a specific diminution, it is necessary first to determine the time from which the quantitative diminution must be measured, so that, by means of a comparison established between the amount of the previous time and that of the subsequent time, the difference may be recognized.

[*Latin ed. p. 412*]

412 In ROMANA, it is necessary to ascertain whether the revenues which the Decree *Cum Nuperrimis* considers to be lost or diminished, should be attributed to the revenues assigned to the titular, at the time when he obtained the benefice and to which a pension was assigned, or rather, whether they are revenues which the benefice possessed before the new political circumstances or before the year 1870, in order to determine, by comparing the former revenues with the present ones, whether a real and effective diminution has occurred, in the sense of the aforementioned Decree. It appears, says the Most Reverend Prelate, that the extraordinary Decree has affected the state of revenues as it was at the time when the titular obtained the benefice and to which a pension was assigned, and therefore, that if a diminution of the pension should occur, it must be determined by the difference between those revenues and the present revenues. It should be remembered that the aforementioned Decree was a special provision founded on the law of equity: since, due to new circumstances, many beneficiaries in Italia have suffered a diminution of their revenues, it seemed just that they should be somewhat relieved from this damage, either through the contribution of pensioners or through a proportional reduction of their pensions. Indeed, the Prelate continues, this diminution of revenues should be understood as referring to the revenues that existed at the time the benefice was conferred and the pension assigned, and it is derived from the first two paragraphs of the Decree itself. For in the first paragraph, it is stated that, since the revenues of the benefices have suffered a diminution due to new circumstances, the beneficiaries considered those revenues no longer sufficient to bear the burdens that were previously assigned to them. Therefore, before the new circumstances, the revenues were sufficient to support the burdens, including pensions. The following paragraph of the Decree states: "It was considered most grave by the beneficiaries that they should be compelled to pay pensions, the payment of which was urged upon them, for the favor of which they were legitimately granted or reserved [the benefices]." These words clearly express that the beneficiaries considered it a grave burden to be compelled to pay this burden, to the extent that the revenues

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were no longer the same.

[*Latin ed. p. 413*]

ROME 413 and when pensions are legitimately established: therefore, from the words stated above, it clearly appears that the revenues, concerning whose diminution the Decree wishes to provide, are the revenues assigned to the beneficiary at the time of the granting of the benefice and the imposition of the pension. Furthermore, according to the Roman Summist, this is also derived from the common theories of canon law, which are followed in the resolution of questions concerning beneficiary revenues, and these theories teach us that the time at which the grant was made must be considered. Thus, Tonanti, in *De pens. eccl.*, chapter 58, number 4, 5, asking at what time the revenues of a benefice resigned with reservation of a pension, with the clause of sufficient revenues, should be considered in order to determine whether the beneficiary retains a suitable provision, responds that it is the time at which the grace was obtained. He proves this by examining the time of the rescript and, establishing a general principle, says: "Generally, it is established that the value must be examined with respect to the vacancy." Hence, it is stated in rule 55 of the Apostolic Chancery, under penalty of nullity, that in all petitions for benefices, the true annual value of the revenues and the amount of benefices already held by the petitioner must be expressed, so that the Supreme Pontiff may know which revenues he wishes to grant to the Titular and which burdens of pensions he wishes to impose on the grantee. *Comment.* in *Reg. Cane. Apost.*, number 45. Therefore, in such cases, it seems that it can be established as a legal aphorism what the cited author states with other doctors in book 1, chapter 83, namely, that the value must be examined at the precise time of the grant: which, however, as Cardinal De Luca says in *De beneficiis*, discourse 90, number 19, must be understood morally, that is, it must not examine a remote time. Therefore, the Summist concludes that, even if in the Decree *Cum Nuperrimis* the time from which the amount of the diminution of the revenues of the benefice should be measured was not determined, from the aforementioned teaching, that time would certainly be the time of the granting of the benefice and the imposition of the pension, because the case remains omitted in the common disposition of law. Finally, the Summist argues that this interpretation is also...

[*Latin ed. p. 414*]

414. It was given in ROMANA by the Holy Congregation uniquely competent in this matter. Thus, in ROMANA, concerning the reduction or suppression of pensions, on May 30, 1873, in the response to the third question, a proportional causal relationship is presented for the reduction of pensions due to the diminution of the revenues of the benefice, as mentioned in the cited Decree; similarly, in ROMANA, concerning pensions,

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dated September 20 and December 20, 1878. Therefore, the intention of the legislator in the cited Decree was that, in order to alleviate a common misfortune, both pensioners and beneficiaries should contribute; and this is based on the greatest equity: for if the titular bears the greater burden, being burdened with the expenses of the choir and other obligations, it is just that the pensioner, although in a smaller proportion, should also bear the burden, who is not bound by the choir and enjoys a lucrative title. Pensioners receive the fruits of a lucrative title without any labor or burden that is attached to the administration of the episcopate or benefice. *Discept., ecc. 56, n. 21.* With these principles and statutes established in law, the Summista observes that the cited Decree is also applicable to the Capitulars of the Vatican, both because of the aforementioned decisions of September 20 and December 20, 1878, which concern the Chapter of the Vatican, and also because of the tenor of the Decree itself. After carefully considering all matters, the Holy Fathers judged it necessary to establish and decree this general rule. Therefore, the Summista concludes, it does not seem that there can be any doubt that if the revenues assigned at the time of the collation of the benefice and the imposition of the pension have suffered a notable diminution, there should be a proportional reduction of the pensions, according to the intention repeatedly mentioned in the cited Decree. This is even more strongly to be maintained now, because it is also suggested by the current norm adopted by the Supreme Pontiff, who, when conferring benefits in the Vatican, first considers the revenue of the benefice and then, with a proportionate adjustment, assigns a suitable and sufficient portion to the titular, and deducts the other portion in favor of the pensioner. This deduction was never made in the largest proportion unless the pension was originally intended for the life of the pensioner, as was the case in lib. 1290 concerning canonical prebends, and in lib. 645 concerning benefices.

[*Latin ed. p. 415*]

In ROMA, 415, concerning benefits for clerics, in the book, 322,50. But now, the perpetual, continuous, and increased pensions are almost doubled: namely, the pensions burdening canons have been increased to 2,500 livres, and those burdening Beneficiates and Clerics-Beneficiates amount to 1,500 and 500 livres, respectively. From this, it seems that, according to the Roman Summist, consideration must be given to the different economic conditions in which the former possessors of the benefits of the Basilica Vaticana find themselves, compared to the more recent possessors of benefits, invested according to the aforementioned rule: and consequently, that, considering on the one hand the increase in income, and on the other the moderation of the imposed pensions, there should not be a place for the application of the Decree *Cum Nuperrimis*. With these things stated, the following was assumed to be clarified: Whether and in what way pensions

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are subject to a retention of 7 in every hundred, due to the increase in the tax on movable property, according to the new law and its financial provisions of July 22, 1894, in the case of RESOLUTION. The Sacred Congregation of Bishops and Regulars subsequently issued the following response: After an audience held by the Most Holy Father on April 22, 1895, after hearing the report and considering all things, the Most Holy Father decreed and decided: Pensions, according to the norm established by the same Most Holy Father, which are increased and endowed with perpetuity, are subject to a further tax under the title — increase of movable property — while other pensions are not subject to it.

[*Latin ed. p. 416*]

416 NOVARA, OR GENOA. PENSION. On August 23, 1895. SUMMARY OF FACTS. In response to the requests of the Fathers of the Somascan Congregation, the parish house of Saint Mary Magdalene in the city of Genoa, established in the year 1842, was granted a pension by the Piedmontese government, amounting to 1500 livres, from the revenues of the Episcopal See of Novara, as confirmed by the Apostolic Briefs of Gregory XVI, with the proviso that this would continue until other provisions were made for the endowment (of the community). This pension, in the year 1869, was reduced to 500 livres, and has always been paid by the predecessors of the current Bishop of Novara, as ordered by the Holy See. However, upon assuming his seat, before proceeding to make the payment, the Bishop deemed it prudent to inquire from the Fathers of the aforementioned house about the economic situation of their community, in order to determine whether the condition for its dissolution, as stated in the Apostolic Briefs, had been fulfilled. Having received a response, which, although general, did not displease the Bishop of Novara, he nevertheless paid the pension of 500 livres for the year 1894. However, at the beginning of the current year, the Bishop, upon receiving a request from the Holy See, requested a reconsideration or rather a reduction of the pension; and after hearing from various sources, the matter was brought before the plenary Congregation of Bishops and Regular Canons. SYNOPTIC DISCUSSION: THE RIGHTS OF THE BISHOP OF NOVARA. Here, he argues for a further reduction of the pension, first, because the revenues of his See have suffered a significant diminution, not only due to the law of Conversion of Church Assets, but also due to the law abolishing tithes; so that the endowment of the See, which previously amounted to one hundred thousand livres, is now reduced to twenty thousand livres; hence, applying the most recent decree, the pension should be reduced to one-sixth, namely, to 250 livres per year. He further contends that this should be done more strongly, secondly, be-

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cause...

[*Latin ed. p. 417*]

417 NOVARIEN. OR IANUEN. This [city] is so called because, contrary to what is alleged, the poverty of the Convent is not the reason for its being deprived of its endowment. Indeed, it is well known that after the law suppressing religious corporations, provincial treasuries were established, to which legacies or other funds are transferred from individual religious houses; and if these houses cannot publicly or privately possess these funds, they can nevertheless use them through the provincial treasury. Hence, from the fact that the House of Magdalene receives subsidies from the provincial treasury, it follows that its economic condition is better; otherwise, if the above were not admitted, and the suppression of religious houses remained in effect, the condition stipulated in the Apostolic briefs could never be fulfilled, and thus the pension, which is supposed to be temporary, would become permanent. Finally, the Bishop concludes by stating that he does not object to a transaction or agreement for relieving the table [of expenses] from the burden of the pension, which, according to him, could be achieved if the table were to pay 1000 *libellae* in one sum.

RIGHTS OF THE RELIGIOUS CONGREGATION OF THE SOMASCHI. The Procurator of the religious, having stated that the disputed pension assigned to the Convent of Magdalene was not an increase, but a supplement to the endowment, as it appears from the Apostolic briefs, first argues that the poverty of the said Convent cannot be called into question, and proves this by the fact that it receives subsidies from the provincial treasury. However, he completely rejects the idea that these subsidies are derived from legacies or other funds left to individual houses. Hence, he argues, the Bishop cannot use the receipt of these subsidies to his advantage; otherwise, it would follow that the provision, of which the cited Apostolic letters speak, should be made with the savings of other houses in the Province of Ianuensis, which is clearly contrary to reason. But the Procurator urges further. When the imposed pension was reduced to 500 *libellae*, this was unknown to the Government and the Royal Economists, who, therefore, believing that the entire pension still existed, deduct it from the taxable income. But, assuming that the Government knew that the pension either no longer existed, or at the very least... [The text is incomplete here].

[*Latin ed. p. 418*]

418. The city of Novara, or Ivrea, should be restored, so that the amount may be increased; and since it is believed that two-thirds of the revenues of the Novara chapter are suppressed by pensions, and these revenues amount to 30,000 livres, they should, according to the law, be returned to the Government; and therefore, instead of paying 500 livres to the Convent of Magdalene, the chapter would be obliged to pay 1,000 livres annually

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to the Government. Therefore, according to the Procurator, a further reduction is rather detrimental to the Novara chapter itself; nevertheless, he concludes that the Religious do not refuse to enter into an amicable agreement within the limits of equity and justice. OBSERVATIONS FROM THE OFFICE. The Reverend Summa, in a legal opinion, believes that the matter can be reduced to two principal inquiries: first, concerning the diminution of revenues suffered by the Novara chapter from the year 1842 to the present; and second, concerning the validity and enforcement of the clause. Until otherwise provided. Regarding the first point, he observes that the necessary elements are lacking to determine which portion of the revenues of the Novara chapter has been subject to diminution; for while the Bishop states that the revenues of the chapter have decreased from 100,000 to 20,000 livres, the Procurator, on the contrary, believes that these revenues currently amount to 30,000 livres. This is a principle of canon law, according to which any diminution that occurs benefits the titular, and not the pensioner, provided that a reasonable amount remains, which, according to the Council of Trent, is 100 ducats for parish priests, and 1,000 for Bishops; for, as Cardinal De Luca states in *Disputationes de Pensionibus*, 91, number 4, since the titular is the owner of the fruits, the diminution should benefit him, and not the pensioner, just as, conversely, the increase should benefit him, without the pensioner being able to claim any share of it, since increase and decrease are consequences of ownership. 3°. This principle, however, does not seem to be invoked by the Decree *Cum nuperrimis* of January 28, 1871: first, because this was an extraordinary remedy to assist those who have suffered damage due to new circumstances.

[*Latin ed. p. 419*]

NOVARA, or GENOA. 4th day. Because the amount of the pension, as determined by the aforementioned decree, was reduced from 1,500 to 500, it does not seem that it should be applied again due to the fact of the abolition of tithes, but rather the matter should be judged according to another principle of canon law. Finally, regarding the second inquiry, it is beyond dispute that, if it could be proven that the Convent of Santa Maria Maddalena had acquired other assets or revenues that would compensate for the pension of 500, the aforementioned clause would be fulfilled, and consequently, the pension would cease. However, whether this can be determined from the evidence presented, is left to the judgment of the Holy Congregation. After these matters have been discussed, and after the observations made ex officio, it was deemed necessary to address the following question: Whether and in what amount should the pension be maintained, which the Episcopal See of Novara pays to the Fathers of the Congregation of Santa Maria Maddalena in the city of Genoa, in the case?

RESOLUTION. August 23, 1895. The Holy Congregation, after carefully considering the question of whether and in what amount the pension,

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which the Episcopal See of Novara pays to the Fathers of the Congregation of Santa Maria Maddalena in the city of Genoa, should be reduced, responded: Negatively.

NOVARA. BENEFICES. August 23, 1895. Father Matthaeus Fazio, from Ferazzano, diocese of Boiano, a religious of the Order of the Friars Minor Observant, Province of San Ferdinando, having petitioned the diocese of Novara, following the promulgation of the law for the suppression of religious orders, obtained a decree from the Holy Congregation concerning Regular Discipline in the year 1886, allowing him to remain "outside the cloister as long as the Regular Province to which he is attached endures," which decree...

COMPENDIUM OF THE MATTER.

[*Latin ed. p. 420*]

420 NOVARA. The Provincial of the Order of Friars Minor executed the appointment on November 26th of that same year. In the meantime, the titular position of Joseph Ugazio, having been vacated by his resignation, remained in the hands of the Bishop of the parish of Insula Superior within the diocese of Novara. The aforementioned religious was presented to him by the patrons of the parish. However, since the Bishop was eager to make the appointment, on February 21st, 1888, he obtained from the Holy Congregation a perpetual dispensation of secularization, granted to the Ordinary of Novara, for the following purpose: that, having ensured that the aforementioned individual has been provided with a suitable endowment or other sufficient means of support, excluding any civil pension, the Ordinary may grant him permission to live outside the cloister, having relinquished his religious habit, for as long as he lives; provided, however, that he observes the essential vows as far as he is able, and that he bears the religious habit as a visible sign within himself. He shall also be subject to the Ordinary in all matters of obedience. Furthermore, after the execution of this decree (within three months, under penalty of nullity), the Ordinary shall be empowered to habilitate the aforementioned individual to canonically acquire and retain only one ecclesiastical benefice in the name of the Holy See, under the title of administration, even if it is a residential benefice or one involving the care of souls, and the Ordinary shall be burdened with the responsibility for this. Having obtained this dispensation, the former religious Fazio received the canonical institution to the parish of Insula Superior, under the title of Saint Victor in Verbano Lake, on March 28th, 1888, by which he was incorporated into the diocese of Novara by virtue of the aforementioned decree. However, fearing that he might lose the pension which he received as a religious from the government, he neglected to accept possession, both canonical and civil, of the parish, and indeed,

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on May 27th of the same year, he bid farewell, having already obtained the aforementioned decree. Six years later, the former religious Fazio was summoned before the Episcopal Curia and subjected to several interrogations. After which, the same Curia, considering that the resignation of the parish priest Ugazio had not been publicly announced according to the provisions of Constitution Humanae, issued a judgment on December 15th, 1894.

[*Latin ed. p. 421*]

NOVARA. 421. He himself declared that he had fallen away from the rights of a parish priest, and therefore, he declared the parish to be vacant. Against this declaratory judgment, the former religious, Fazio, immediately filed an appeal with the Holy Congregation, requesting that it be revoked. Disputation. The Episcopal Curia of Novara maintained that the judgment issued should be confirmed for three reasons. 1. Because the publication of the resignation made by the Reverend Ugatio was omitted, as mentioned above. Indeed, it states that no one is unaware that this publication is prescribed by the Gregorian Constitution under penalty of invalidity of the benefit to be conferred within three months, either through an equivalent act or through a public, not secret, delivery of possession, as noted by Sebas. Berardi, Commentary on Church Law, universal, part 3, decision 7, chapter 3. The Holy Congregation teaches that this prescription is still in force in the document of the Council of Fermo, January 20, 1894. See Acta S. Sedis, volume 27, page 8. Therefore, since the former religious, Fazio, neither began possession of the parish nor complied with the aforementioned prescription of the Constitution, he must be considered to have lost the benefit. 2. Because at the time that the parish was conferred upon him, there was no provision for a suitable means of support, and therefore, according to the aforementioned rescript of February 21, 1888, he was entirely ineligible to receive benefits. 3. Because several complaints had been brought against the aforementioned former religious, both concerning his manner of acting and his harsh character, and also concerning his neglect in performing his duties in the parish. Nevertheless, the Bishop does not object to a suitable provision being given to the aforementioned former religious, provided that it be without the care of souls, and that he be invited to do so by the Holy Congregation itself.

IN SUPPORT OF THE REVOCATION OF THE SENTENCE. On the contrary, the advocate for the former religious, Fazio, maintains that the reasons for the impugned sentence are based on no solid foundation. Firstly, he observes that, according to the Gregorian Constitution, the publication of the resignation is not expressly imposed on the successor to the benefit resigned, but is...

[*Latin ed. p. 422*]

422 NOVARA. The act must be performed either solely by the resigning

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party or by the recipient of the resignation. Therefore, there is no fault to be attributed to the appellant if he omitted it; and even if this fault were to be admitted, it tacitly implies that it was remedied either by the exercise of the parochial functions for six years, or by the acts of the pastoral visitation, in which it is stated that nothing irregular was found in the parish of Insulae Superioris. Turning to the second reason, assuming that the Episcopal Bull of institution establishes the notoriety required in the matter, it is asserted that the new parish priest publicly announced and declared his appointment to the people, and at the same time affixed the letters of institution to the doors of the church; these acts, therefore, since they fulfill the requirements of formal and notorious possession, it is rightly considered that the new parish priest has substantially and equivalently satisfied the prescription laid down in the Constitution regarding the publication of the resignation made by his predecessor, Ugazio. To remove all doubt and definitively resolve the controversy, the author cites the authority of Riganti § 228-29-30, rule XXXVI of the Apostolic Chancery, which states that a three-year possession remedies any defect in possession. And this is all the more true because the purpose of the aforementioned Bull was to prevent clandestine or concealed resignations of benefices; and since in this case there is no question of a concealed or simulated resignation, it is evident that the lapse of three years has fulfilled the formality required by the Bull. Regarding the third reason for the challenged sentence, namely that the condition imposed by the secularization decree was not fulfilled, namely that the former religious, Fazio, should be deemed capable of receiving ecclesiastical benefices, the Advocate, assuming that the benefice legally replaces the sacred patrimony, indeed, it is a substitute for the sacred patrimony, points out that the Ordinary of Novara, when conferring the benefice upon the priest Fazio, at the same time and in a single act fulfilled the condition of the decree, providing for his honest sustenance. Thus, the foundations of the challenged sentence are refuted.

[*Latin ed. p. 423*]

NOVARA. 425. The matter is discussed from another perspective. Indeed, he argues that, according to canonical jurisprudence, and according to the resolutions of the Holy Congregations, removable pastors cannot be recalled without a serious and legitimate cause; therefore, this must apply even more strongly to pastors who are titular, as is the case with the priest Fazio. Furthermore, the petitioner adds that, in fact, none of the alleged causes are sufficient to justify the removal of the aforementioned priest. The objections raised against the pastor are: 1° favorable testimonies from the parishioners; 2° a good testimony from the former Bishop Riccardi, now promoted to the seat of Turin; 3° finally, the testimony of the present Bishop himself, who, in 1894, during a pastoral visitation of the parish of Insula Superior, after examining the records and other documents of the parish,

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confirmed everything, praising the pastor with laudable words. From this, the petitioner concludes that the aforementioned sentence must be entirely revoked. OBSERVATIONS FROM THE OFFICE. The Reverend Advocate submitted the following for consideration: 1° As is stated in regulation X IX of the Apostolic Chancery, "De Viginti," that if the beneficiary of an office dies within 20 days from the time the consent is given, then any nullity of the resignation of the office must be taken into account, and therefore the office should be considered as vacant due to death; however, to prevent hidden and simulated resignations in offices, first Saint Pius V and then Gregory XIII, in their celebrated Constitution *Humano vix iudicio*, dated 1584, established some stricter rules. Specifically, in the aforementioned Constitution, it is decreed that resignations of offices of any kind made outside the Curia must be published within three months from the day of the new collation, either by the resigning party or by the recipient, first in the Cathedral Church, and then in the church of the office, during the gathering of the people for sacred functions, under penalty of nullity of the collation of the resigned office. 2° As Riganti notes in his commentary on the aforementioned regulation X IX, number 210, this provision is not universally accepted; and, contrary to the usual custom, the diocese of Novara is among the places where this Constitution does not hold.

[*Latin ed. p. 424*]

424 NOVARA. As is evident from the informative reports submitted by the Bishop of Novara to the Holy Congregation. 3° In addition to the provision already mentioned in the aforementioned Constitution in § 7, it is prescribed that, unless possession of the benefice is taken within three months from the date of the grant of the provision, the provision shall be null and void, and the benefice shall be considered vacant by that very fact. Therefore, although, in general, the formal act of taking possession of a benefice does not entail the loss of the title to the benefice, but only the non-receipt of the fruits, as the authors generally teach, it is a different matter when it comes to resigned benefices, which, by virtue of the aforementioned Constitution, are considered vacant by that very fact if possession is not taken within the prescribed time. Indeed, while in other benefices, a three-year possession suffices to remedy any defect in possession, this principle cannot be invoked for resigned benefices, since the application of the rule regarding annual and three-year possession is expressly rejected by the aforementioned Constitution in § 5. 4° It is undoubtedly the case that this latest provision of the Constitution is still in full force, as it is customary to make express mention of it in petitions submitted to the Apostolic Datary for the obtaining of resigned benefices. With these legal precedents established, the Reverend Summus observes that, indeed, there is no doubt that the priest Fazio did not take formal and legal possession of the parochial benefice of Insula Superior within the prescribed time; however, it remains

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for the judgment of the Most Reverend Fathers to decide whether these two facts, namely, the publication made by the priest Fazio from the pulpit of his appointment to the parish of Insula Superior, and the affixing of the letters of his institution to the doors of the church, and the approval made by the Bishop of Novara during the visitation of the parish, can be considered as a tacit and equivalent legal admission into possession, and therefore, whether the doctrine commonly accepted by the Doctors, and which Ferraris refers to in his Bibliotheca Canonica, Vol. V, Institution n. 36, can be invoked to avoid the penalties sanctioned by the Gregorian Bull: "Institutions also regarding title in benefices, although..."

[*Latin ed. p. 425*]

NOVARA. 425. One may take possession of a benefice by one's own and sole authority, provided that the consent or license of the legitimate Superior is present, who wishes to grant corporal possession; one may take possession of it without anyone else introducing him into it, as the Doctors generally state, because the authority of the Superior already intervenes. With these premises, the following question arises: How is the declaratory sentence of the Novara Tribunal of December 15, 1894, to be confirmed or revoked in this case? RESOLUTION. After deliberation by the Sacred Congregation of the Eastern Churches and Regular Canons, it was decided on August 23, 1895: Affirmative to the first part, according to the manner indicated; Negative to the second. The manner is: The Bishop should not proceed to the declaration of the Priest's resignation unless he has first provided for him in a suitable manner in some other way. FROM WHICH, THE FOLLOWING MAY BE GATHERED: I. Corporal introduction into the possession of a benefice cannot be done by one's own authority; but when the license or consent of the legitimate Superior is present, one can take possession of one's benefice without anyone else introducing him into it. II. The Rule of the Apostolic Chancery regarding the three-year possession does not remedy any defect that may have occurred in the corporal introduction to the benefice, to the extent that, after this lapse of time, it is presumed to have been regular. III. Although the foregoing may be invoked when dealing with benefices in general, they are subject to an exception in the case of resigned benefices: in these, possession must be taken in the manner prescribed by the aforementioned Gregorian Bull, and that under pain of nullity, and no other equivalent methods are permitted. Therefore, since the priest Fazio did not comply with the prescription of the Gregorian Bull, the Sacred Congregation rightly confirmed the sentence of the Novara Tribunal and rejected the appeal.

[*Latin ed. p. 426*]

426 From the SECRETARY'S SHORT DECREE, by which it is declared that it is possible to proceed safely to the solemn beatification of the ven-

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erable Servant of God, Theophilus a Curte. The illustrious family of the Franciscans, following that salutary and fruitful counsel which Our Redeemer gave to His disciples, so that, despising the fleeting things, they might enter more quickly the way to heaven: "If thou wilt be perfect, go sell what thou hast, and give to the poor, and thou shalt have treasure in heaven: and come, follow me." has never lacked men of great spirit, who, although abundant in nobility, riches, honors, and all those things to which other men eagerly aspire, have nevertheless not hesitated to despise these fleeting and unstable things, so that they might possess an inexhaustible treasure. Among these, the venerable Servant of God, Theophilus a Curte, a priest of the Order of the Friars Minor of the Observance of St. Francis, who having attained the highest degree of Christian perfection, has wonderfully illustrated the Seraphic Order, rightly and deservedly belongs. He was born in Corsica, in the town of Grado, from John Anthony de Signori and Mary Magdalena Arrighi, parents who enriched the clarity of their ancient lineage with the ornament of integrity and virtue, in the Christian year 1676, on the thirtieth day of October, and was cleansed with the waters of Baptism, being given the name Blaise. The boy, having received from his pious parents the teachings of virtue, expressed them excellently in his manners, so that even in that tender age, all admired in him the zeal for piety, his gentle nature, and the innocence of his life. Indeed, he preferred silence and solitude to childish games, he often knelt in prayer for a long time in the temples, he often invited and encouraged his equals to pious exercises, and he found delight in them. He had scarcely touched the threshold of adolescence when he began to think of the Franciscan family, and he revealed his intention to his parents, who, after much resistance, finally yielded. But God, favorable to his desires, added to his spirit, so that, having overcome natural inclinations, steadfast in his purpose, he might accomplish what he had hoped for. Therefore, on the twenty-first day of the month of September in the year 1693, he dedicated himself to the Order of the Friars Minor of the Observance in the monastery of his native town, and, having put on the rough garments of the institute, he changed the name Blaise into Theophilus, so that he might also bear that name to himself.

[*Latin ed. p. 427*]

FROM THE SHORT RECORD 427, he hoped that his charity would be pleasing to God. He had scarcely begun his novitiate, and already he seemed eager to embody the form of Christian perfection. Meticulous in the observance of religious discipline, he never failed in even the smallest actions of life; always first in work, and for the sake of true humility, last in order. This led to the fact that he became an example of the Seraphic life, not only for the novices, but also for the more advanced members. He was so inflamed with love for God, while pouring out his prayers, that

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this heavenly fire seemed to emanate from his very mouth and eyes. He diligently followed the sweet duties of piety, and nothing pleased him more than to address the Virgin Immaculate with the sweetest name of Mother. In his homeland, he pronounced his solemn vows, and then he devoted himself to studies in Rome for a whole year, and he completed his course of studies in Naples with great distinction, where he offered the first fruits of his priesthood to God. While doing these things, he neglected nothing in order to acquire, as well as perfection of spirit, virtue, and piety, so also to acquire knowledge and learning, and he made such rapid progress in literary, philosophical, and divine disciplines that he was deemed worthy to be honored with the title of Reader. But soon, Theophilus's field of activity expanded, where he could both display his virtues, and wonderfully exercise himself, and where he could show charity towards God and towards his neighbors. Having requested a secluded and hidden retreat near Subiaco, intending to devote himself to spiritual exercises, he was astonished to see that the brothers there lived a more austere and holy life, and, being most eager to practice humility and austerity, he begged his superiors to allow him to remain there. He found a very pious brother, the Blessed Thomas of Cori, whom he joined in the society, a man most similar to him in innocence of life, and a companion in apostolic labors, and he set him as an example of holy emulation. Therefore, he was entrusted with the important task of promoting a stricter and more rigorous discipline in some of the houses and retreats of his Order, and he himself, burning with the greatest zeal, in order to both increase the glory of God and to benefit the spiritual well-being of his brothers, overcame countless difficulties with an eager and unwavering spirit, and achieved the goal he had set for himself. Therefore, he first restored the Crustumerium retreat to its former splendor, then he established another on his homeland island, and finally, in a town in Etruria, within the boundaries of the Diocese of St. Minias, to which the name Phiceclo was given, he displayed wonderful examples of the Apostolic life. The holy man, by his merits, was justly called by...

[*Latin ed. p. 428*]

428 From the Secretarial Briefs of the Franciscan Order, called the "Propagator of Sacred Affairs," in order to encourage the members to cultivate the works of piety and to strictly observe the regular discipline, he rightly judged that he himself ought to abound in all those praises by which he might stir up others, and that his words would be more effective if confirmed by example. Therefore, he pursued poverty, obedience, chastity, and charity, and all other virtues, with singular and complete dedication. He loved poverty so much that he always sought the simplest things in food and clothing, wore old clothes, and often asked for alms at the door for the religious family entrusted to him. As for obedience, he was always obedient to his superiors, never refusing any command, and even when

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he held a position of authority, he religiously observed the mandates of the Franciscan Rule. He guarded his innocent simplicity and the purity of his morals with abstinence and the most rigorous bodily penances. What shall we say about charity? He visited the sick, remained with those nearing death until their last breath, helped the needy even when they did not ask for it, and consoled the afflicted with counsel and deeds, as the circumstances required. He was accustomed to help his neighbors. For the venerable servant of God, Theophilus, benefited not only his own brethren with his words and example, but also the Christian people, and from the sacred missions entrusted to him, many and great benefits flowed. The Bishop of the Diocese of St. Miniato, and other prelates in Etruria, moved by his reputation for holiness, eagerly availed themselves of his ministry in spiritual exercises and missions. Theophilus himself fulfilled the duties of this sacred office with such zeal and constancy that he was not hindered by weakness of body, by the harshness of the roads, by the squalor of the lodgings, nor by the severity of the weather. He endured the cold and the heat with patience, proclaiming the divine word as he walked on foot through towns, villages, and hamlets. To these great labors were joined fruits that were exceedingly rich and salutary. Many souls were converted through his efforts, many deeply ingrained vices were uprooted, peace was often restored within families, wherever he gave sacred sermons, integrity of morals was instilled, piety was increased, and a desire for the eternal salvation of souls was awakened. Therefore, the servant of God was rightly considered and called an Apostle of the town of Phicecli and of the entire Diocese of St. Miniato. Such was Theophilus, and his fame spread far and wide. After leaving his homeland island a second time, he established himself in a Franciscan house there, and then went to Italy; he converted a great number of people.

[*Latin ed. p. 429*]

From the Secret Archives, Brief 429: A large crowd accompanied him as he boarded the ship; frequently, both on his journeys and during his sermons, large numbers flocked to him, eager to hear and see him. Nor was divine testimony lacking; for he was endowed with the gifts of discerning hearts and prophecy, and many miracles are said to have been performed by him during his mortal life. Finally, when he had reached the age of sixty-four, in the retreat of Piacenza, which he had particularly distinguished by his virtues, on the fourteenth day before the Kalends of June, in the year one thousand seven hundred and forty, desiring to be with Christ and to attain eternal blessedness, he peacefully departed for the seat of eternal beatitude. He left behind a sweet longing among his companions, and a great glory of sanctity among the Christian people, which still flourishes today in his homeland and in Etruria, and has increased, especially through miracles wrought at his sacred relics. Therefore, after examining

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all these matters concerning the honors of the Blessed in Heaven that were to be bestowed upon him, a cause was instituted before the Congregation of Sacred Rites, and after a period of time, with investigations and other proceedings, it was happily and definitively concluded. Our Predecessor, Pope Pius VII, having praised the virtues of the Venerable Theophilus a Curte with singular commendation, decreed on the sixth day before the Kalends of September, in the year one thousand eight hundred and seventeen, that he had attained heroic sanctity. Then, We, by another solemnly published decree on the tenth day before the Kalends of June of the year one thousand eight hundred and ninety-five, declared that two miracles, worked through the intercession of the Venerable Brother Theophilus, were of the highest authority. It remained to be discussed whether the Venerable Servant of God could safely be reckoned among the Blessed. This matter was presented to our beloved son, Vincent, Cardinal Vannutelli, Prefect of the Sacred Rites, who was the relator of the cause, at a general assembly held before Us this year on the fourteenth day before the Kalends of July, in the Vatican buildings; and all those present, both Cardinals and Consultors of the Congregation of Sacred Rites, unanimously gave an affirmative response. We, however, considered it necessary to offer prayers to God, so that We might receive heavenly assistance in making a judgment on so important a matter. Finally, on the day before the Kalends of July, the day on which the immortal glory of St. Bonaventure, the ornament of the Franciscans, is commemorated with sacred solemnities, after celebrating the Eucharistic sacrifice, with Caietano Aloisi Masella, Prefect of the Congregation of Sacred Rites, and the aforementioned Vincent Vannutelli, Cardinals, and Augustine Caprara, Promotor of the Holy Faith, present, We decreed that it was safe to proceed to the solemn canonization of the Venerable.

[*Latin ed. p. 430*]

450 FROM THE SECRETARY'S OFFICE, concerning the Beatification of the Servant of God, Theophilus of Curte. Since these things are so, moved by prayers, both of the entire family of the Observant Minor Order, and of the inhabitants of Corsica and Etruria, We, by Our Apostolic Authority, grant the following faculties through these letters: that the Venerable Servant of God, Theophilus of Curte, a priest, professed in the Order of the Minor Friars of the Observance of St. Francis, may henceforth be called by the name of Blessed, and that his relics, though not in solemn supplications, may be presented for the public veneration of the faithful, and that images of him may be adorned with sacred rays. Furthermore, by the same Our authority, We grant that an Office and a Mass of the Common Confessors, not of the Pontiffs, with proper prayers approved by Us, be recited for him, according to the rubrics of the Roman Missal and Breviary. We grant that the recitation of this Office and the celebration of the Mass may take place

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only within the boundaries of the Diocese of St. Miniati, as well as in all the churches of religious houses of the Order of the Minor Friars of the Observance of St. Francis, by all the faithful who are bound to recite the canonical hours, and, with regard to the Masses, by all priests, both secular and regular, in the churches where the feast is celebrated. Finally, We grant that the solemnities of the Beatification of the aforementioned Venerable Servant of God, Theophilus of Curte, be celebrated in the temples with an Office and a Mass of the higher twofold Rite, which We command to be carried out on days legitimately determined within one year after the same solemnities have been celebrated in the upper portico of the Basilica of the Vatican. Notwithstanding all Apostolic Constitutions and Ordinances, and decrees concerning non-cult, and all other contrary things whatsoever. We decree that, as far as these letters are concerned, even printed copies, provided they are subscribed by the hand of the Secretary of the aforementioned Congregation and sealed with the seal of the Prefect, shall have the same full faith in judicial proceedings as would be given to the signification of Our will contained in these letters. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the twenty-fourth day of September, in the eighteenth year of Our Pontificate. L. © S. C. CARD. DE RUGGIERO.

[*Latin ed. p. 431*]

FROM THE SECRETARY. BRIEF 451. DECREE by which it is declared that proceedings can be initiated for the solemn beatification of Bernardinus Realinus. We believe that, through a certain benevolent design of Divine Providence, it has happened that the Christian people, within a short interval of time, commemorates the memory of two men, who, having been raised among the blessed in the heavenly homeland, left behind a great store of virtues on earth. For after the secular celebrations in honor of Saint Philip Neri, on the third day after his heavenly departure in the aforementioned century, the cause was presented to Us to enroll Bernardinus Realinus of the Society of Jesus, almost his equal, among the Blessed, who possessed certain similarities with Saint Philip in his holy life. Indeed, both were endowed with such sweetness of character and affability that they wonderfully won the hearts of the crowds. Both embraced their neighbors with fervent charity, especially children, among whom the saints seemed, in a certain way, to become young again, and whom they instructed in the evangelical precepts until their very old age. Both were inflamed with fervent devotion and love for the Virgin Mother of God, whose cult they never ceased to promote. Philip was the Apostle of Rome, and Bernardinus was called and considered the "Light of Lycia," although the former was born in Florencia and the latter in Aemilia; and God did not allow either of them to leave the city of their birth while they lived. These celebrations are of such salutary and fruitful nature that those who celebrate them must necessarily reflect upon the merits and outstanding deeds of those men, and be stirred

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up to piety and virtue by their memory. Therefore, We confidently expect that this will be fruitful for the Christian people, to whom may God grant not only to contemplate the examples of these holy men, but also, with His help, to imitate them. Bernardinus Realinus was born in Carpi, a town near Modena, of noble parents, Franciscus and Elisabetha Bellentani, on the Kalends of December in the year 1630. The father, a man of standing, was often away from home; the mother remained at home, undertaking the task of nurturing and educating the boy. And she performed this office of maternal charity so diligently and lovingly that Bernardinus, when he later spoke of his mother, could not restrain his tears, remembering and grateful. She herself kindled the first sparks of piety in the tender heart of her son, which afterward were never extinguished.

[*Latin ed. p. 432*]

452 Having been freed from the snares of worldly vanities, and not seduced by the alluring promises of fleeting things, he was imbued with a love for virtue, a hatred of vice, and a fear of eternal punishment; he was thus incited to aspire to heavenly rewards. During the years allotted to him, he began to attend school, where he demonstrated the finest talents, both of mind and of character. He applied himself with such diligence and keenness to the acquisition of virtues, as well as to the study of letters, that he became an example to his peers and a source of admiration to his teachers. In his homeland, he learned the elements of Latin grammar and Greek, and he diligently pursued the humanities and the rudiments of philosophy, giving clear evidence, even as a boy, of his keen intellect and tireless industry. Therefore, scarcely having reached the threshold of adolescence, he was sent to Mutina by his father, who placed great hopes in him, to complete his course of studies with the highest distinction, under the guidance and auspices of the most celebrated Castelvetro. There, for a period of two years, he immersed himself wholeheartedly in Greek and Latin studies. Subsequently, he went to Bologna, where he first devoted himself to philosophy, and then to civil and canon law, and he emerged as a most accomplished jurist. Meanwhile, he wrote several works in Greek and Latin, which were praised by all who were acquainted with them. However, he could not bring himself to publish any of his writings, except for one, which he presented more out of deference to Cardinal Madrucci, whose name he mentioned, and which was deemed worthy of commendation by learned posterity. Nevertheless, he later came to regret his works and studies, as if he had misapplied his talents. He rightly judged that no effort or labor should be expended by men on anything that does not seem conducive to eternal salvation. Returning to Carpi, when a dispute arose concerning family matters, and after hearing the witnesses and patrons, the matter was entrusted to a prudent arbitrator to be judged. But the arbitrator, without hearing all the evidence, pronounced his judgment, and

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when Bernardinus inquired why he had done so, he replied arrogantly and unjustly. Bernardinus, quickly angered, drew his sword, with which he was armed, and inflicted a slight wound on his adversary's face. Overwhelmed by the great disturbance of his spirit, he was so ashamed and contrite for this deed that he sought forgiveness from God and from his adversary, not requesting the deserved punishment, but rather, he so restrained and controlled his irascible nature that he became the most meek and patient, capable of enduring any injury.

[*Latin ed. p. 433*]

From the Secretarium Brevium, 455, and following. For it is the habit of a virtuous and just man, if once he should fall, to rise again, and to draw strength and spirit from the very fall itself. Driven from his homeland, he seeks refuge in Mediolanum. In Papiaè, he converses with the most innocent Charles Borromeo, finding great delight in his company. He governs many towns, some as a praetor, others as a vicarious under the authority of the Prince, ruling with great honor and to the applause of the people. Finally, he sets out for Neapolis, where God elevates Bernardinus, whom he encourages to pursue a life of greater holiness. And indeed, as he was once walking through the city, behold, two young men of the Society of Jesus came to meet him, so modest and devoted to piety that he judged them not to be mere human youths, but fallen angels from heaven. The following day, he entered the church of the Society of Jesus, where a priest from the pulpit taught the people that in this mortal life, all things are false, uncertain, fleeting, and perishable, and that virtue alone is firm and unshakeable, with roots fixed in the highest places, and that it leads to immortality in heaven. Interpreting these words as spoken specifically to him, just as Francis of Assisi did, he immediately resolved to renounce worldly things and to choose virtue as his companion and guide. Therefore, by the invitation and guidance of the Virgin Mary, the Mother of God, he sent a message to his surviving parent, his brother, his relatives, and to all things, and, relinquishing his own debts, he completely freed himself from family concerns, and gave himself to the Society of Jesus, taking a name. In this matter, it was highly worthy of admiration that when the Rector of the College asked him whether he would prefer to become a member of the priesthood or a lay brother, he wished to be enrolled among the lay brothers, especially because he could devote more time to the Rosary. But the Rector did not agree, and assigned him to the study of theology and sacred literature. Having begun his studies in the priesthood, he was ordained in the solemn ceremonies of August and began his priestly duties. Then, reflecting within himself, he realized that he was no longer his own, but belonged to God, and he resolved to dedicate himself entirely to God's glory and the salvation of his neighbors. Therefore, there is no burden that he should avoid, nor any duty of the sacred ministry that he should

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not perform readily and diligently. And therefore, he constantly strives to promote the divine cult, to give sermons to the people on the truth of the Catholic faith, to administer the sacraments of penance and the Eucharist frequently, to sit with the sick, to visit those imprisoned, and to exhort them to repentance, to help the poor, and to offer counsel, as the circumstances require.

[*Latin ed. p. 434*]

454 FROM THE SECRETARY • He requested a brief assignment, to assist the first [seminarians] daily. When this matter was brought to the ears of St. Francis Borgia, the superior general of the Society of Jesus, he, contrary to all custom and regulations, admitted Bernardinus, who had been in the group of Sodalitium Sacerdotum Professorum for three years, to the third year of his novitiate. The newly ordained priest was appointed as a teacher of piety to the novices and performed this office with great diligence and usefulness. He was also appointed prefect of morals for the adolescent students in the college and reaped abundant fruit from his ministry. But these honors bestowed upon him served as a spur to complete the arduous and difficult path of perfection more quickly. Therefore, because of his outstanding virtue, he acquired a great reputation for good. This became evident shortly thereafter when, acting in accordance with his superiors, he was to travel to Lycia. The entire city was moved by the news, and all citizens of every rank came to greet him, considering themselves fortunate to be able to offer some token of esteem to the holy man, and all, as the Ephesians did with Paul, followed him weeping. He was received in Lycia with such significance and joy, in proportion to the sorrow and grief that Naples had experienced. There, as if placed in a station assigned by God, he saw and felt that his task was to labor for the eternal salvation of souls. However, he did not lose heart, but, having implored the help of the Virgin, the Mother of God, he willingly accepted the burdensome and vigilant duty. When he realized that the people looked to the priests as an example, and that their conduct was more effective than their precepts in maintaining discipline, he, drawing upon himself, presented himself as Paul wished to present himself to Titus: "In all things be an example of good works; in doctrine, in integrity, in gravity." He knew well that, due to the long absence of the workers, the vineyard of the Lord was becoming overgrown and wild, and that no fruit could be harvested from it unless it was cultivated. Therefore, he saw that it was necessary to devote extraordinary labors to this extraordinary task, and he was not deterred from his undertaking. And first, as if embarking on a sacred expedition, he instituted special exercises of piety: he rekindled the study of divine things in the multitude; he restored the neglected Christian duties and customs, and, lest he irritate the minds of those present, he took the gentlest measures to ensure that each one recognized his own fault and detested

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his bad habits; and then, having instilled a love of holiness, he encouraged them to fear God in a salutary way with the most human words.

[*Latin ed. p. 435*]

From the Breviary, number 435: Christian instruction opened the eyes of the tender minds of boys and girls to the light of the Gospel truth; he attracted them to himself with the pleasantness of his words and the blandishments of holy charity, so that they followed him through the streets and alleys. This, which is worth mentioning and transmitting to posterity, was accomplished by the servant of God, who, with great zeal, attacked the abominable superstition, the inhumanity of the barbarians, and the inhuman punishment. For if any woman of a noble family dared to bring shame upon her people, she was put to death by her closest relatives, or by her blood relatives, or by her affines. Therefore, it often happened that Alia, or her sister, felt the cruelty of her father or brother, the murderer and butcher, and thus the tribe or family that was held guilty of human error was subsequently bound by impiety and heinous crime. Against this most atrocious custom, Bernardinus fought strenuously, and, with the help of the Virgin Mary, he emerged victorious from the battle. For as soon as he perceived that a sin was being committed and that danger threatened, he flew to the place with great speed, and used such eloquence, exhortation, and prayer, with such force, that he almost snatched the sword from the hands of the aggressor, and reconciled the daughter with her father and the sister with her brother. And since this often happened, men came to the servant of God of their own accord, before committing any act, choosing him as their avenger and as the defender of their honor. And it did not happen only once that divine help was offered to Bernardinus in these controversies. Thus, not long afterwards, the custom faded away as the superstition was removed. Since Bernardinus could not be present everywhere, he established a brotherhood of the leading citizens, and, with the help of his companions, he used every means to alleviate the miseries of the afflicted. He visited the sick, bringing them solace of both body and soul; he encouraged the imprisoned and those in chains to be patient; he illuminated the squalid dwellings of the poor with the splendor of charity, and he consoled the needy with the hope of eternal blessedness; he dispelled the old hatreds and animosities, which are the contagion of households; and he provided dowries for poor young women, so that they would not be exposed to the danger of losing their virtue; he spared nothing that he judged to be suitable for the benefit of his neighbors and for the spiritual good of his companions. He also embraced the Turks who had been captured, as if they were brothers in Christ, and, with wonderful charity, he helped those who were abandoned and miserable, and he instructed them in the precepts of religion with such gentleness and humanity that they abandoned their barbaric customs and their true savagery. Meanwhile, while he was

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doing these things, he founded a church with admirable generosity, and he dedicated it to the name of Jesus.

[*Latin ed. p. 436*]

456 FROM THE SECRETARY'S RECORDS. Therefore, so that the Society of Jesus might have a permanent dwelling and established seat in Lyciensi, a college was happily founded, and whatever was needed for the life of the community was provided by the generosity of the citizens of Lyciensi. All these things, which indeed few could have reasonably expected, were accomplished through the efforts and counsel of a single man. However, it is clear that the labors of this holy man bore abundant fruit. Therefore, it is not surprising that God willed to bestow a singular benefit upon the city of Lyciensi, granting them his servant as a precious treasure and a cultivator of souls, and that he never permitted him to be removed by the will and choice of men. Whenever the Superiors of the Society of Jesus decided that he should depart, it always happened that some obstacle and difficulty arose: either he was seized by a sudden illness, or unforeseen inclement weather occurred, or the very citizens of Lyciensi delayed Bernardinus, who was eager to set out. For those who had enjoyed the company of this holy man for forty-two years and had called him the father of their country, could not bear the thought of being separated from him. Therefore, the Rector of the municipality enacted a law that no one should offer a horse or carriage to Bernardinus Realini, and that if anyone learned of his departure, they should report it to the same Rector. For they rightly believed that if the holy man were to leave, the city would lose a most precious ornament and a protector. This belief led them to employ many deceptions and stratagems in order to obtain some small piece of clothing or any other item belonging to the holy man. Not a few would teach their children to follow Bernardinus as he walked, as was their custom, and to substitute a walking stick of reeds, which the old man was accustomed to use for support, with another. The servant of God, believing that this was happening to him because of the excessive exuberance of the children, would laugh and consent to their actions. But the final separation, which was to tear Bernardinus away from his people of Lyciensi, was now imminent. At the beginning of the year 1676, in the eightieth year of his life, Bernardinus foretold that this would be the end of his life. When this was reported to Cardinal Belarmino, he, who greatly esteemed the holy old man, sent a messenger to ask him to prepare a place for himself in the heavenly realm. Upon hearing the news, the old man smiled and replied that he would gladly follow the example of the Cardinal. Shortly afterward, he was seized by a violent fever and, lying in bed, spoke his last words to two prominent citizens who had come to

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see him.

[*Latin ed. p. 437*]

From the Secretarial Brief 457, it was reported. Therefore, the leaders of the city were quickly convened and decided to adopt Bernardinus Realini, a citizen who had deservedly earned great merit, as their heavenly patron, offering him all their prayers. When Bernardinus learned of this, he promised that he would love the people of Lycienses, whom he so wonderfully loved, with even greater charity from Heaven. Meanwhile, weakened by an internal illness, he was refreshed by the Sacraments, and afterwards, as if weary from a long journey, he peacefully fell asleep in the Lord. Greatly, his reputation for virtue was already a commendation, but after his death, it increased even more and was spread more widely. Therefore, Our Predecessor, Pope Leo XII, after a long period of time and after many events, and after all that was necessary in such a matter had been completed, in the Congregation of Cardinals, the Sacred Rites were discussed regarding the virtues with which the venerable Bernardinus Realini of the Society of Jesus shone, and with the consent of the same Congregation, Our Predecessor Leo XII declared that he had reached heroic heights; that is, the highest point. Afterwards, the question was raised about the miracles that were said to have been worked by God through the intercession of the venerable Bernardinus Realini; and after all matters were carefully considered, two true and verified miracles were established; therefore, on November 13, 1894, We issued a decree regarding the truth of these miracles and granted permission to proceed further, without it being necessary to investigate another miracle. It remained to ask the Cardinals of the aforementioned Congregation whether they considered it safe to proceed to grant the honors of Beatification to the venerable Bernardinus Realini; and in a general meeting held before Us on December 8 of the same year, they unanimously responded that it was safe to do so. However, in this matter of such importance, We hesitated to reveal Our mind, until, with fervent prayers, We sought assistance from the Father of Lights. Having done so, finally, on April 8 of this current year, We pronounced a solemn decree stating that it was safe to proceed to the solemn Beatification of the venerable Bernardinus Realini. Since this is the case, moved by the prayers of the entire Society of Jesus, by Our Apostolic authority in these letters, We grant the faculty that the same venerable Servant of God, Bernardinus Realini of the Society of Jesus, should henceforth be called Blessed, and that his body and the relics thereof, although not to be carried in solemn processions, may be publicly presented for the veneration of the faithful, and that images of him may be depicted.

[*Latin ed. p. 438*]

45S FROM THE SECRETARY OF BREVIARIES. Furthermore, by Our

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Apostolic authority, We grant that the Office and Mass be recited annually in common, by confessors, not by pontiffs, with prayers specially approved by Us, according to the rubrics of the Roman Missal and Breviary. This recitation of the Office and celebration of the Mass, We grant, shall take place solely in the cities and dioceses of Naples, Lycia, and Carpen, and for all times and in all oratories of the Society of Jesus, by all the Christian faithful who are bound to recite the canonical hours, and with regard to the Mass, by all priests, both secular and regular, in the churches where the feast is celebrated. Finally, We grant that the solemnities of the Beatification of the Venerable Bernardinus Realini be celebrated in the aforementioned temples with the Office and Mass of a double major rite, which We command to be performed on the day designated by the Ordinary respectively, within one year after the same solemnities have been celebrated in the upper hall of the Basilica of the Vatican. Notwithstanding any Apostolic constitutions and ordinances, and decrees concerning the cult, and all other contrary things whatsoever. We wish that copies of these letters, even printed ones, shall have the same full force in judicial proceedings, as would be given to Our will expressed in these letters. Given at Rome, at Saint Peter's, under the Fisherman's ring, on the twenty-seventh day of September, in the year one thousand eight hundred and ninety-five, in the eighteenth year of Our pontificate. C. Card. DE RUGGIERO. L. * S. FROM THE HOLY CONGREGATION OF RITES OF THE CITY AND THE WORLD. Concerning the obligation of celebrating Mass according to the calendar of the Church in which it is celebrated, which Benedict XIV clearly teaches (Op. de Beat., and Can., lib. IV, part. II, c. II, n. 5), namely, Masses in honor of the Blessed, or even of Saints, which are granted by concession to certain Religious Orders, by other priests, whether secular or regular.

[*Latin ed. p. 439*]

From the Sacred Rites, number 439, it cannot be permitted; the Congregation of Sacred Rites had already declared this long ago, and afterwards it confirmed and upheld this with numerous particular or general decrees. Nevertheless, since, as Benedict XIV himself stated, it seemed incongruous that external priests, coming to the churches of Regular canons on days established for a feast, should celebrate another Mass besides that, which is permitted to them by the same regulations; hence it came to pass that the Supreme Pontiffs, even in the very brief of beatification, granted an indulgence for the Regular canons, extending it to all and each priests celebrating in the aforementioned churches. This, however, with the passage of time, was judged more prudently and almost necessary, since more and more Masses, both of Saints and of the Blessed, are permitted in the same Regular canons, or even in many particular churches; so that, indeed, the laws established concerning the celebration of Masses might not suffer confusion or easy transgression; unless, perhaps, the observance of these very laws

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would become almost impossible. All of which had been considered many times, and especially in one Roman collection of doubts, in a meeting held on August 23, 1890; the Sacred Congregation, with a considered resolution, decreed that, in order to completely eliminate every difficulty, certain norms should be established for all priests in every case concerning this matter. Therefore, in the Ordinary Assemblies held at the Vatican, signed on that day, this general rule was established to be observed by all: All and each priests, both secular and Regular, coming to a church, or to a public oratory, shall celebrate Masses of Saints and of the Blessed, even if they are the proper Masses of the Regular canons, in conformity with the Office of the same church or oratory, whether those Masses are contained in the Roman Missal, or in the Missal of the Regular canons; except for the particular rites proper to the Orders. If, however, the Office of the lower rite is celebrated in the aforementioned church, or oratory, each of the celebrants is free to celebrate a Mass for the repose of the soul, or a votive Mass, or even a Mass of the feria; except on those days in which the aforementioned Masses are prohibited by the rubrics of the Roman Missal, or by the decrees of the Sacred Rites. July 9, 1895. Concerning all of which, a report was afterwards submitted by me, the undersigned Secretary, to the Most Holy Lord Pope LEO XIII; His Holiness gave his judgment on the same Sacred Congregation.

[*Latin ed. p. 440*]

440 E C. S. RITUUM has ratified and confirmed; Rescripts or Decrees, both particular and general, which are contrary to this, are entirely abrogated by its supreme authority. On the 9th of December of the same year.

C. CARD. ALOISIUS MASELLA L. S. R. C. Prefect.

* S. ALOISIUS TRIPEPI S. R. C. Secretary.

QUEBEC. Various Doubts.

The Most Reverend Lord, Lewis Kazarius Begin, Archbishop of Cyrene, Administrator of the Diocese of Quebec, humbly proposed the following doubts to the Sacred Congregation, namely:

I. Whether the titular feast of a church, occurring from December 31st to January 5th, has an octave?

II. Whether December 30th can be assigned to the feast of Saint Anastasia, Martyr, in the parish church?

III. Whether the feast of Saint Titus should be celebrated in the parish church on January 4th or February 6th?

IV. How should the Office of the Nativity of the Blessed Virgin Mary and its octave be arranged in the church of Saint Adrian, Martyr, whose feast falls on the octave of September, when the days of September 9th and 10th are impeded by lesser double feasts?

V. Whether a Bishop can validly designate a feast for the titular cele-

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bration of a new church, which is not found in the Martyrology or in the Supplement of the Diocese?

VI. At what time should twelve candles burn on the anniversary of the church's consecration?

VII. Whether on the octave of the same anniversary of the church's consecration, candles should also be lit, or can they be lit?

VIII. Whether the Decree issued in Halifax on April 16, 1886, concerning the three days after which the anniversary of the Bishop's election is celebrated in the Diocese, and which was not given by the Bull that was issued, but by that which was proclaimed in the Consistory, applies also to Bishops who were instituted by the Sacred Congregation of Propaganda Fide, who frequently received Bulls, and who received possession of the Diocese, and indeed were consecrated some time before the Consistory in which they were proclaimed?

[*Latin ed. p. 441*]

From the Sacred Congregation of Rites, 441, 10th session.

I. Whether the readings for the Second Nocturn, on the octave day of some Saint, which are not found in the Breviary, should, in the absence of an Octave, be taken from the common office for the first class, or rather from the feast day itself, according to the decree issued in the ecclesiastical province of Quebec, on April 15, 1880, number 4?

X. Whether the Solemnity of the Most Sacred Heart of Jesus can be celebrated according to the rules prescribed for other Solemnities?

XL. Whether it is permissible for the Ordinary, where it is deemed beneficial for the fostering of devotion, to assign certain Sundays throughout the year to certain parish churches for the celebration of Solemnities, even if they are distant from the actual feast day?

XII. Whether a Sunday can be permanently assigned to the Solemnity of the Annunciation of the Blessed Virgin Mary, specifically the second Sunday after Easter, unless a feast of the first class occurs on that day?

And the Sacred Congregation, after careful consideration and at the request of another member of the Masters of the Sacred Ceremonies, decided to respond as follows:

To I: Affirmative, according to the rubrics.

To II: Affirmative, without omitting the commemoration of Saint Anastasia in the second Mass of Christmas, due to the station.

To III: Negative to the first part, affirmative to the second part, according to the Roman Martyrology.

To IV: Since on September 8th, the Office of Saint Adrian the Martyr should be celebrated for the church's title, on the 9th of the same month, the Office for the Nativity of the Blessed Virgin Mary should be celebrated,

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even without the complete octave, as is done in Rome in the Diaconia of Saint Adrian the Martyr, by transferring the feast of the higher rank to another free day, according to the rubrics.

To V: Negative.

To VI: For the entire day, beginning with the First Vespers.

To VII: Negative to the first part, affirmative to the second part.

To VIII: Affirmative.

To I X: Negative to the first part, affirmative to the second part.

To X: Negative, unless it is a feast of precept.

To XI and XII: Negative.

And thus it was decided and ordered to be observed.

December 13, 1895.

[Signature] CARD. ALOISI-MASELLA, S. R. C., Prefect.

[Signature] ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 442*]

FROM THE SACRED RITUALS OF ROME. A doubt concerning the Psalm. Regarding the "De profundis" after the Office for the Dead. The Sacred Congregation for Rituals, after considering the report of the undersigned Secretary, having attentively examined the explanations presented by the Prior and the Secret Council of the Archconfraternity of the Most Holy Heart of Jesus, established in the Church of Saint Theodore in Rome, and having maturely deliberated, decided to respond as follows: To the doubt: Whether, on anniversaries and other days, besides the days of commemoration of all the faithful departed, and the day of the burial of the deceased, if the entire Office for the Dead is recited according to the double rite, the Psalm "De profundis" should be omitted after the Lauds? The answer is: No; according to the rubrics of the Breviary, the Missal, and the Rituals of Rome, and the decrees, especially in document 2 Einsidlen, 4044, dated 29th of July 1736, where it is written: "The rubrics of the Breviary and the Rituals of Rome must be observed, and after Vespers and Lauds in the Office for the Dead, the Psalms "De profundis" and "Lauda anima mea Dominum" are omitted, only on the day of all the faithful departed, and on the day of the burial of the deceased; and in another document, Order Erem. Camald. Montis Coronae 4085, dated 9th of May 1739. And it was ordered to be observed on 10th of January 1896. With the recent blessing permitted by the Sacred Congregation. RITE: The Blessing and Imposition of the Sacred Medal of the Immaculate Conception. (Sacred Congregation, 19th of April 1895). V., commonly the Priest who is to bless, wearing the cope and stole, begins absolutely: "Auxilium nostrum in nomine Domini." (Our help is in the name of the Lord). "Qui coecum fecit caelum et terram." (Who made heaven and earth). "Dominus vobiscum." (The Lord be with you). "Et cum spiritu tuo." (And with thy spirit). LET US PRAY.

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— Almighty and merciful God, who, through the many appearances of the Immaculate Virgin Mary on earth, have deigned to work wonders continually for the salvation of souls, pour forth Thy blessing upon this medal, that those who remember it piously and carry it devotedly may receive the protection of her patronage.

[*Latin ed. p. 443*]

From the Sacred Ritual, 443, may they feel and experience your mercy. Through Christ our Lord. Amen. Then, the coin is sprinkled with holy water, and afterward, it is placed upon [the person] with these words: "Receive this holy coin, and may you faithfully keep it, and treat it with due reverence, so that the most pious and Immaculate Lady of Heaven may protect and defend you; and renewing the wonders of her mercy, may she mercifully obtain for you from God whatever you humbly request, so that living and dying, you may happily rest in her maternal embrace. Amen." Or, if there are many: "Receive this holy coin, and may you faithfully keep it, and treat it with due reverence, so that the most pious and Immaculate Lady of Heaven may protect and defend you; and renewing the wonders of her mercy, may she mercifully obtain for you from God whatever you humbly request, so that living and dying, you may happily rest in her maternal embrace. Amen." Then follows: "Kyrie, eleison. Christe, eleison. Kyrie, eleison. Pater noster..." [Our Father...] "...and lead us not into temptation; but deliver us from evil. Amen. Hail, Holy Queen, conceived without original sin. Pray for us. Amen. O Lord, hear my prayer, and let my supplication come before you. Amen. The Lord be with you. And also with you. LET US PRAY. — O Jesus Christ, who willed that the most blessed Virgin Mary, your Mother, should shine forth from her very origin with countless miracles, grant that, always imploring her protection, we may attain eternal joys. Who lives and reigns world without end. Amen. "*$$$0%^-

[*Latin ed. p. 444*]

444 FROM THE HOLY PENITENTIARY: DOUBTS concerning absolution from complicity in a scandalous sin. It is asked by the Holy Penitentiary: "Does the confessor incur censure when absolving a person complicit in a scandalous sin, who, although absolving the person, does not absolve the person from the sin of complicity, but the person who is complicit has not declared the sin of complicity in confession?" And the Holy Penitentiary, on May 16, 1877, judged that: "The deprivation of the jurisdiction to absolve a person complicit in a scandalous sin, and the attached excommunication, are directed towards the very scandalous sin in which the confessor himself was complicit, insofar as the confessor absolves him." However, some interpret this response in such a way that the excommunication imposed on those who absolve a person complicit in a scandalous sin can almost always be avoided. For, according to them, if it suffices to warn

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the person complicit, by the confessor, not to declare such a sin, then the confessor, by absolving the person complicit, would always escape censure. To prevent abuses in this matter, which is of such importance, the following two questions are proposed to the Holy Penitentiary:

I. Does the confessor incur censure when absolving a person complicit in a scandalous sin, who, although absolving the person, absolves him from other sins, but the person who is complicit remains silent about the sin of complicity in confession, even though the confessor is certain that the person complicit has not been absolved from the sin of complicity by another priest, and therefore has not been absolved from that sin? The reason for doubting seems to be that, in such a case, although the sin of complicity is not subjected to the keys by the penitent, the confessor nevertheless cannot absolve the person from other sins without, at least indirectly, also absolving him from the sin of complicity, which he knows has not yet been properly subjected to the keys, nor therefore remitted.

II. Does the confessor incur censure when absolving a person complicit in a scandalous sin, who, in order to avoid the aforementioned censures, has directly or indirectly induced the person complicit not to declare the scandalous sin committed with him, and 3...

[*Latin ed. p. 445*]

From the Apostolic Penitentiary, it is then decreed that the accomplice should be absolved, but without declaring the sin of complicity. The reason for doubting is because no one is obligated to defend their own fraud; moreover, if, by acting in this way, the confessor were to avoid censures, the prohibition against absolving the accomplice, under pain of excommunication, would often seem illusory. Directly, the confessor induces the penitent when he explicitly and clearly warns him not to mention the sin of complicity, because, for example, he already knows it, and the declaration of it would be useless. Indirectly, however, he induces the penitent when the confessor attempts to persuade him that the shameful act committed with him is not a sin, or at least not so grave that he should be concerned about it; hence, the penitent concludes that it is permissible for him not to declare such a sin, and he truly abstains from declaring it. The Sacred Penitentiary, after mature consideration of the foregoing, and with the approval of His Most Holy Father, Pope Leo XIII, declares: the reserved excommunication in the Bulla does not prevent confessors from absolving, or pretending to absolve, that accomplice who, although not yet absolved from the sin of complicity, does not confess it, but acts in this way because the confessor has induced the penitent, either directly or indirectly. Given in Rome, in the Sacred Penitentiary, on the 19th of February, 1896. R. Card. MONACO,

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Prefect. A. CAN. MARTINI, Secretary.

[*Latin ed. p. 446*]

446 APPENDIX IV. EXHIBENS ACTA SEDIS APOST.; QUAE AUT AUT QUAE IAMDIU EXARATA TEMPESTIVO LATUERUNT SUNT EPHEMERIDUM MODERATOREM. —.4<s=C- S. Poenitent. Ap. II. Octob. 1820. — Dubia quoad ieiunium. An qui ad ieiunium tenetur uti possit in serotina refectione, ubi viget indultum, de lardo e dello strutto, etsi per diem iisdem usus non sit. R. Qui ad ieiunium tenetur, licite uti posse in serotina etiam refectione condimentis per indultum permissis, quia illa, vi indulti, olei locum tenent; nec quidquam referre quod ipse pro suo arbitrio iisdem in prandio usus non sit. S. Poenitent. Ap. 16 Ian. 1834. Quatenus paterfamilias fruatur indulto carnes comedendi in diebus prohibitis, et nequeat aut nolit duo facere prandia, valeant carnes edere etiam alii, ceu sunt filii et filiae, avus et ava, et personae eius addictae servitio. R. Personis quae sunt in potestate patrisfamilias, cui facta est legitima facultas edendi carnes, permitti uti cibis patrifamilias indultis, adiecta conditione iis, qui ieiunare tenentur, de unica comestione et de non permiscendis (i). (1) Eadem S. Poenitentiaria cum quaereretur utrum patresfamilias, cum in familia adest aliquis a lege abstinentiae a carnibus dispensatus, dispensationem ad omnes ex familia indiscriminatim extendere possint, respondit (10 Ian. 1834): «In firmitatem, et aliud quodcumque rationabile impedimentum, de utriusque medici consilio, non vero gulam, avaritiam, sive generatim expensarum compendium, eximere posse a praecepto abstinentiae in diebus esurialibus ». Et ad quaesitum: « An ratio propter quam filii famlias uti possunt cibis vetitis a patre familias exhibitis, sit eorum impotentia physica sive moralis observandi praeceptum; seu potius indultum quo gaudet paterfamilias»; respondit (29 Dec. 1862): « Ratio permissionis de qua in quaesito proposito sermo, non est indultum patrisfamilias, sed impotentia in qua versantur filii familias observandi praeceptum ».

[*Latin ed. p. 447*]

APPENDIX. IV. 447 Sacred Penitentiary Congregation. Decree of February 8, 1828. Those who are dispensed from the quality of food may, for the sake of their health, not use meat on the days of fasting, and in other respects, may use foods according to their hunger, so that the observance of the law concerning food may be as far as possible maintained. R. Affirmative, after careful consideration of the premises. Sacred Penitentiary Congregation. Decree of February 15, 1884. It is permitted to eat meat and fish to those who are dispensed from the law of abstinence, etc. Whether the faithful who are dispensed from the law of abstinence on Fridays and Saturdays, during the year, when the obligation of fasting does not apply, may eat both fish and meat. R. The Sacred Penitentiary Congregation, having

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carefully considered the proposed question, and after consultation with His Holiness Gregory XVI, at the mandate of His Holiness, responded: It is permitted. Sacred Penitentiary Congregation. Decree from Audience, April 15, 1836. Whether, in the general indult for the city and diocese [F.], under the name of "seasonings from fat," the use of any animal fat is understood. R. His Holiness responded: Only pork fat should be used as a seasoning. Sacred Penitentiary Congregation. Decree of January 30, 1866. Whether it is permissible to use meat on Fridays and Saturdays, on which days seasonings from animal fat are permitted. R. Under the terms "seasoning of fat," cooked meat is not included. Instruction of the Sacred Congregation of the Propagation of the Faith, June 10, 1868 – To the Apostolic Vicars in [Sinensis]. Regarding the dispensation from fasting and abstinence in the case of the coincidence of the beginning of the Chinese year with the first days of Lent, the Sacred Congregation of the Propagation of the Faith, deeply concerned, so that all Apostolic Vicars of the Empire of [Sinensis] and neighboring kingdoms who have obtained from the Holy See the faculty of dispensing from fasting and abstinence in the case of the coincidence of the beginning of the Chinese year, or with the first days of Lent, or with other days of abstinence outside of Lent, may observe the same method in the use of said faculty, has prescribed the following rules:

[*Latin ed. p. 448*]

448 APPENDIX IV. 1. Therefore, it must be known that, in the dispensation of which we speak, not only the faithful and priests of China are included, but also European missionaries. 2. Although this dispensation is usually granted by the Holy See to Apostolic Vicars for a period of ten years, they must nevertheless take care not to grant the dispensation for the entire decade at once, but rather, according to the necessity of various cases, year by year, through circular letters duly transmitted; by which missionaries and the faithful are informed of the dispensation granted to them for the coming year. 3. The reason for the dispensation should never be the coincidence of the beginning of the Chinese year with days consecrated by the laws of the Church to fasting or abstinence, but only serious difficulties, in which the faithful are generally found, with regard to the full observance of those same laws, due to the circumstances of time and place. 4. If it should happen that the beginning of the Chinese year falls on a day of abstinence before Lent, it will be permissible to grant a dispensation for all the days of abstinence occurring that year, from the beginning of January until the beginning of Lent; provided that missionaries and the faithful are obligated, in order to somewhat compensate for such indulgence, to observe the fast and abstinence on the vigil of the Annunciation, or of the Purification of the Blessed Virgin Mary, or even on any other feast within the year, at the prudent discretion of the individual Apostolic Vicars. Those, however, must diligently take care not to designate for such a fast and

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abstinence a vigil that coincides with the beginnings of the Chinese year, and moreover, they will order that on the vigil designated for said fast and abstinence, missionaries and the faithful add special prayers, imploring the help of the Mother of God for the prosperity of the Christian cause. 5. In the case of a coincidence of the beginning of the Chinese year with the first days of Lent, the law of fasting and abstinence will be transferred to the three days of Rogation. However, Apostolic Vicars must know that no more days of fasting should be imposed on missionaries and the faithful at this time than they are required to observe at the beginning of Lent (according to the common law), and whenever a fast of only one day must be transferred due to the aforementioned coincidence, it is better to postpone it to the Thursday of Rogation, or to the vigil of Ascension. These are the things which the Sacred Congregation, in successive meetings concerning the affairs of the Chinese missions, on July 5, 1841, on October 3, 1845, and on August 3, 1850, deemed it necessary to declare or prescribe. And since all of these things have been recorded by Pope Gregory XVI and have been fully approved during the pontificate of the Supreme Pontiff Pius IX, there is no doubt that they will be diligently and carefully observed by the Apostolic Vicars of the Empire of China and the adjacent kingdoms.

[*Latin ed. p. 449*]

449 APPENDIX IV. Sacra Congregatio de Propaganda Fide, Constitutiones, tomus Io, septembris, 1634. – De dispensatione votorum. Num missionarii possint dispensare in voto simplici castitatis, ex eo quod in eorum facultatibus exceptantur tantum vota ultramarina et Com postellae ac Liminum Apostolorum. Respondetur: Cum in facultatibus concedendis regulariter exceptantur vota simplicia castitatis et religionis, missionarii, cum facultatibus eis concessis, in simplici voto castitatis dispensare non possunt, nisi expresse illis hoc fuerit in eisdem concessum.

Sacra Congregatio Sacrorum Officii, 23 Iunii (1875). – Baionen. Lex de non permiscenda piscibus cum carne in Quadragesima obligat etiam indulto gaudentes. Utrum obligatio de non miscendis piscibus cum carne diebus Quadragesimae attingat omnes qui vi indulti carnibus vesci possunt, vel solummodo eos qui ieiunant. Respondetur: Affirmative quoad primam partem; negative quoad secundam partem; et detur decretum 24 Martii 1841, nempe ad dubium: « An lex de non permiscendis licitis et interdictis epulis, eos etiam respiciat qui ad unicam comestionem non tenentur, uti iuvenes antequam tertium compleverint septennium, aliique rationabiliter ab eadem excusati ob impotentiam vel laborem? » Emit decreverunt: Non licere.

Sacra Congregatio Sacrorum Officii, 5 Februarii 1890. – Vicarius Apostolicus Laponiae Meridionalis. – Dubia quoad ieiunium.

1. An in hac Missione teneamur servare abstinentiam in vigiliis quoad ieiunium suppressis?

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2. An Christifideles prohibeantur comedere carnes, quoties per diem edunt, omnibus diebus quoad ieiunium simul et abstinentiam abrogatis?

3. An obstringantur prohibitione ne permisceantur epulae in omnibus diebus, item quoad ieiunium et abstinentiam abrogatis?

4. An obligentur Christifideles, qui in Quadragesima utuntur licentia vescendi carnibus, ad visitandam ecclesiam semei in hebdomada, et ad recitandum ibi quinque Pater, Ave et Gloria in honorem SS. Sacramenti, quia id in indulto Missionis de Hong-Kong ad nos extenso, tamquam conditio a SS. Sede inserta putabatur?

Respondetur:

Ad 1. Negative, facto verbo cum SSmo.

Ad 2. Negative. Acta, Tom. XXVIII, fasc. CCCXXXII. 29.

[*Latin ed. p. 450*]

430 APPENDIX IV. Regarding point 3. Affirmative, within the same community: and concerning the mind. The mind is such that the Reverend Father, the Vicar Apostolic, by reason of custom, may be able to grant what he judges to be more expedient in the Lord; and the same Vicar Apostolic should diligently instruct the faithful and strive to gradually lead them to observe the prohibition of mixed marriages. Regarding point 4. This matter is to be remitted to the prudent judgment and conscience of the Reverend Father, the Vicar Apostolic. Sacred Congregation of the Holy Office, January 27, 1892 – Vicariate Apostolic of Victoria Nyanza. Does a chief or head have judicial and coercive power over his people? By the usage of this region, whoever is a chief or even the smallest head, even if he is only in charge of ten men, has full judicial and coercive power over his subjects, so that he can even pass a capital sentence upon them at his discretion. Likewise, a head over his servants. Nor are those who have committed offenses against their subjects to be brought before another tribunal. However, the customary form of judgment is very summary. The question is: 1. Can a Christian chief or head, with a safe conscience, and observing natural and divine law, exercise this power over his subjects or servants, and even impose the death penalty on them for a heinous crime, for example, if a subject wants to kill him or another, or hand them over to their persecutors to be killed for the sake of religion or other reasons? 2. To the extent that the answer is affirmative, when asked about his right, can the missionary warn him about his right, either in general or in a particular case? Answer: Regarding the first and second points, it is permissible until a more accurate form of judgment is introduced, provided that justice is observed, and provided that, in more serious cases, especially capital cases, the mildest possible procedure is followed, and with the advice of prudent men. Sacred Congregation of the Holy Office, December 22, 1880 – Ratisbon. Regarding censure concerning clerics who are presumed to contract civil marriage. By

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an Apostolic Constitution, it is declared that clerics "who are established in the sacred ministry, or are Regular or Monks, after having made a solemn vow of chastity, are subject to excommunication latae sententiae, reserved to the Bishops or Ordinaries," if they are presumed to contract marriage. Some maintain that this censure should also be extended to those clerics who intend to contract a "civil" marriage in places where the decree Tametsi of the Council of Trent, Session 24, chapter 1, concerning marriage, has been promulgated and is in force.

[*Latin ed. p. 451*]

APPENDIX IV. 451 This opinion, however, is rejected by others. Therefore, the question arises as to which opinion should be followed.

R. Clerics who are instituted in the sacred ministry, or Regular or Monastic clergy, who, after having emitted the solemn vow of chastity, are suspected of contracting a so-called civil marriage, in places where the law of Trent concerning clandestine marriages is in force, incur excommunication latae sententiae, reserved to the Bishops or Ordinaries.

S. C. S. Officii 20 (June 1866 — Vic. Ap. ad Gallas. Doubts concerning the Gallas who harbor mortal hatred towards the murderers or those who carried the bodies of their parents. Among the independent Gallas, it is customary that, if someone is killed or seriously wounded, from that very moment, all and each of his relatives and kinsmen are bound to swear mortal hatred against all and each of the murderers' relatives and kinsmen, and to pursue them to the point of death, and that no one can be excused from this obligation without losing the social rights within his tribe, and being expelled from it as an enemy. This right and duty of avenging blood lasts as long as a certain sum of money, to be determined by arbitrators, is not paid for the murder, and thus the tribe to which the deceased belonged receives satisfaction. This satisfaction would be rendered futile if such an obligation to take up the aforementioned enmity or vengeance were removed, since among the independent Gallas, public officials are entirely lacking who would oversee the punishment of crimes and the protection of rights.

Therefore, the following is asked:

1. Can the enmity exercised in the aforementioned manner be considered a just war between one tribe and another?

2. Can someone be admitted to the Sacraments who, on the one hand, protests that he harbors absolutely no hatred or ill will towards the people of the hostile tribe, but is, on the contrary, prepared and eager to show them the usual signs of friendship as soon as he has received satisfaction for his rights; and, on the other hand, promises that he will never seek an opportunity to engage with his enemies, but will avoid encountering them, lest he be put in danger, or accept a fight, or, if he refuses, incur the offense of his own people?

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R. Regarding the conditions required for a just war, namely legitimate authority, a just cause, and a suitable manner, it is clear that the third condition is entirely lacking in the case in question, as it touches upon the very essence of the first doubt. A suitable manner, in fact, demands that the war not be carried on with cruelty or the desire to harm, but with a righteous intention of obtaining due satisfaction, and that the innocent, as...

[*Latin ed. p. 452*]

452 APPENDIX IV. It cannot, therefore, be denied that harm may result. But when the Gauls, as soon as one of their family or tribe has been killed, swear a mortal hatred against all and each of the slain person's relatives, and attack, strike, and slaughter them without exception, if they come across them, with the sole aim of expiating the bloodshed with bloodshed, according to the barbarous custom, until the customary compensation is paid among them. They do not seek vengeance under the guidance of public authority, whose sole role is to denounce and direct the war, but rather, in a bestial manner, private individuals rise up against private individuals; they do not investigate beforehand whether the homicide was committed by chance or out of necessity for lawful defense, nor whether it was committed culpably; nor do they seek all possible means, either through themselves or through common friends, by which they might peacefully obtain the compensation due to them, but as the same Apostolic Vicar recounts in another letter, from the very moment that a homicide or a lethal wound occurs, all the relatives of the slain and of the slayer immediately separate themselves, so that not only do they break off all communication and intercourse of life with each other, but if they happen to meet, they are even compelled to engage in a fight to the death. Surely, no one can fail to understand how much all of this is repugnant to the proper conduct of war, and indeed, to the very notion of a just war. Therefore, the Apostolic Vicar, and all the missionaries residing in those regions, must take care to eradicate this barbarous and pernicious custom, from which incredible massacres of people and devastation of property arise. But in the meantime, may those who are so disposed be admitted to the participation of the Sacraments, as is explained in section 2? The answer depends on the well-known principles of moral theology concerning the love of enemies, restitution for the cause of homicide, and the dispositions necessary to receive the Sacrament of Penance. These principles do not contradict the rule that the Apostolic Vicar says he has imparted to the missionaries under his authority, namely, that the Sacraments should not be denied to one who protests that he has no personal hatred in his heart, and that he desires nothing through external enmity other than what is due to him according to the laws of the land, and who also promises to make every effort to abstain from any act of violence against anyone from the enemy group.

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Therefore, the missionaries can follow this rule with regard to those who belong to the family or tribe of the slain. But if we are speaking of those who are from the family or tribe of the unjust slayer, it is also necessary that, as far as it is within their power, they be prompt and ready to make due restitution, and rather endure offense to their own tribe, than to attack and injure anyone from the *adversa* tribe, if they should happen to meet them, except in the case of lawful defense with moderation, as taught by the innocent *tutelae*.

[*Latin ed. p. 453*]

453 APPENDIX IV. From the Sacred Congregation of the Holy Office, March 20, 1686. — Doubts concerning blacks and other wild [persons]. Propositions:

1. It is permissible to capture blacks, [those] who are hostile, by force or by deceit, and other [such] wild [persons], to no one [being a hindrance].

2. It is permissible to buy, sell, and make contracts concerning blacks and other wild [persons], [those] who are not hostile, captured by force or by deceit, to no one [being a hindrance].

3. When blacks and other wild [persons], unjustly captured, are mixed with others who are justly sold, it is permissible to buy them all, or, as they say, both the good and the bad.

4. Buyers of blacks or other wild [persons] are not obligated to inquire about the title of their servitude, whether it is just or unjust; that is, whether they are justly or unjustly enslaved, even if they know that many of them are unjustly captured.

5. Possessors of blacks or other wild [persons], who are not hostile, captured by force or by deceit, are not obligated to manumit them.

6. Those who capture blacks and other wild [persons], who are not hostile, by force or by deceit, are not obligated to compensate the buyers or possessors for their damages.

7. It is permissible for the possessors of blacks and other enslaved [persons] to expose them to manifest danger of death, to wound them, to burn them, to kill them, by *privata auctoritate* [private authority].

8. It is permissible to baptize blacks and other infidels, who are capable of understanding the doctrine of the faith, without instruction in the mysteries of the faith, which is necessary for salvation; also, to leave those same [persons] baptized without such instruction.

9. The lords of blacks and other enslaved [persons] are not obligated to prevent them from living in concubinage.

10. It is permissible to retain captives in servitude after baptism, whether they are justly or unjustly enslaved.

11. It is permissible to buy blacks from heretics, either directly or indirectly, or any other contract made with them; [such persons] remain

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enslaved, and likewise to sell to them.

Answers:

To 1: It is not permissible.

To 2: It is not permissible.

To 3: It is not permissible.

To 4: They are obligated.

To 5: They are obligated.

To 6: They are obligated.

To 7: It is not permissible.

To 8: It is not permissible, except in articulo mortis [at the point of death].

To 9: They are obligated.

To 10: Negatively, if unjustly.

To 11: Negatively, if there is bad faith.

[*Latin ed. p. 454*]

APPENDIX IV. From the Sacred Congregation of the Holy Office, September 12, 1776 — Regarding Indentured Servants in Cochin China. Concerning the practice of Christians among the Cambodians. From ancient times, Christians in Cambodia have purchased Lao and other people from neighboring regions as servants. They do this even when there is doubt, or even when they sometimes know that these servants were stolen from their homeland.

INSTRUCTION FROM THE SUPREME PONTIFF PIUS VI. — To your inquiry, we have decided to respond as follows: First, it must be distinguished whether the Lao captives who are sold by thieves were taken from their legitimate owners, or rather, whether they, being free and of their own right, have been unjustly subjected to the servitude of the thieves. In the first case, it is not permissible to purchase them; for although they are unjustly held by the thieves, it is still forbidden to buy stolen goods from the thief, against the will of the true owner. In the second case, again, it must be distinguished whether the Lao people object to being sold to Christians, or consent to it. If they object, they cannot be bought, for they are the masters of their own freedom, even though that freedom has been unjustly taken from them by the thieves. But if, after being fully instructed about the law that grants them freedom, from which they have been unjustly separated only through the injury of others, they voluntarily and of their own free will, as masters of their own affairs, present themselves to Christians in order to be received and held in servitude, with the prudent intention of, being freed from the more severe and harsh servitude of the thieves, from which they have no other means of freeing themselves, and in order to experience a milder servitude among Christian owners, with whom they can easily persuade themselves that they will come to know the true wor-

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ship of God, and that this will be of inestimable benefit to their souls, then, under these circumstances, it may be permitted to Christians to purchase such captives at a just price, and to reduce them to their own servitude, provided that they have the intention of treating them according to the precepts of Christian charity, and also of instructing them in the rudiments of the faith, so that, if possible, they may be freely and happily led, without any coercion, but only through suitable persuasion and exhortation, to the freedom of the sons of God, which is found only in the Holy Catholic Church, through their conversion to the true faith.

[*Latin ed. p. 455*]

455 FROM THE HOLY CONGREGATION OF THE COUNCIL OF TREVES, REGARDING A DISPENSATION FROM MATRIMONY, dated July 20, 1895, Session 24, Chapter 5 concerning the reform of marriage. SUMMARY OF THE CASE. In Treves, on March 19, 1886, Francis, aged 31, and Susanna, aged 24, were joined in marriage according to the prescriptions of the Council of Trent. This marriage, however, met with a lamentable outcome within a few weeks. For, as is alleged, the bridegroom, frustrated by the failure of a promised substantial dowry, on the very day of the wedding, expressed his anger with harsh words towards his wife and her parents. Consequently, the woman, being simultaneously deeply affected by astonishment and horror, avoided the marital bedroom as much as possible on the first night and thereafter. But Susanna's horror and indignation increased due to Francis's indecent words, threats, and severe acts of cruelty, so that, after almost two months had passed since the marriage, she returned to her father's house, declaring that she would never return to her husband. Then, Susanna's father petitioned the regional tribunal for the dissolution of the civil marriage due to the dishonor and insults of the husband, which he easily obtained on November 20, 1889. After a considerable period of time, petitions were sent to the Ordinary of Treves, requesting that he obtain a dispensation from the Most Holy Pope regarding the marriage that had been consummated but not fully realized. Immediately, the Bishop, with due diligence, initiated a process through his Official, and after this process was completed, the same Official pronounced a solemn judicial sentence, stating that the marriage in this case had only been validly contracted, that there were legitimate reasons for granting a dispensation, and therefore, it was necessary to consult with the Ordinary in order to request a dispensation from the Most Holy Pope regarding the marriage that had been validly contracted but not fully realized.

[*Latin ed. p. 456*]

456 TREVES. Which the Bishop promptly did, transmitting all the records of the proceedings to the Supreme Pontiff, and earnestly recom-

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mending prayers for a dispensation. And this for two reasons: so that Francis, who, as they say, had contracted a civil marriage with a certain Theresia during a certain time, might be able to enter into a true and valid marriage before the Church; and so that the unfortunate woman Susanna might have her desired freedom restored. To these, he added that no scandal or offense could ever arise from this gracious dispensation.

SYNOPTIC DISCUSSION: OPINION OF A THEOLOGIAN. Before the theologian pronounces judgment on the merits of the case, he believes that a preliminary inquiry into the form of the proceedings must be made. And first of all, he observes that it is not surprising that the president of the judgment was not the Bishop or the general vicar, but an Official, who, in those northern regions, is completely distinct from the general vicar. This custom, he says, although it may seem less in conformity with common law, is nevertheless reasonable in itself, and has been proven by long use, and has not been disapproved of by Benedict XIV, *De Synodo*, Book 1, Chapter 3, paragraph 2. But, he says, a more serious difficulty arises concerning the competence of that Official of Treves in discussing and deciding this case. For when it is a question of conducting a canonical process in order to request a dispensation concerning a valid and unconsummated marriage, it is repeatedly required that a special delegation from the Apostolic See be granted, as can be seen from Benedict XIV's Constitution *Dei Miseratione*, § 15, and even more so from the response given last year by the Sacred Congregation to the Archbishop of Warsaw. Indeed, in the judicial records of this kind, there is no mention of such a special delegation. Therefore, the entire process, having been carried out by an incompetent judge, is devoid of all value and has only the force of extrajudicial information from men skilled in the art or place.

[*Latin ed. p. 457*]

TREVES. 457. This [matter] relates to the requirement, as laid down by Benedict XIV, in book 1, chapter 15, § 15, that it be fulfilled before any judicial examination of the cause is committed to either the Sacred Congregation of the Council or another tribunal. Moreover, he adds, even if it should appear from the documents that a Pontifical delegation was granted; nevertheless, the sentence issued by the official of Treves is entirely devoid of legal value due to the lack of jurisdiction in the judge. For such a delegation is usually granted to conduct the proceedings, but never to render a sentence concerning the fact of non-consummation, and the existence and sufficiency of the causes [for nullity]. Furthermore, he adds, if the beginning and the end of this process are not free from defects, then other defective parts also exist. In this matter, it is certainly of the utmost importance that the physical examination of the woman in such cases be carried out according to the form prescribed in the Instruction of the Sacred Congregation of the Council of August 22, 1840. However, from the documents,

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it cannot be ascertained that this instruction was carefully observed. For the entire examination was conducted by three physicians, of whom one (Dr. Thanisch) had already, before the process, been attending to the needs of the wife, concerning whom the inquiry is made. Nothing is stated in the documents concerning the use of a bath, nor the presence of a midwife. Furthermore, he notes that the testimony of seven witnesses, as cited in the Instruction of the Sacred Office, should be required from both spouses, yet it is produced only by one spouse; indeed, from the documents, it is not even clearly ascertained which party presented those seven witnesses. Moreover, it cannot be doubted that, according to the cited Instruction of the Sacred Office, the examination of the seven witnesses should also be carried out in the presence of the defender of the marriage bond; however, from the judicial documents, it is found that the examination was carried out before a judge specially delegated for this purpose and a clerk, but nothing is found concerning the presence of the defender of the marriage bond. Indeed, the presence of the defender of the marriage bond cannot be supplied by his subsequent signature, as is the case in the documents. Benedict XIV, in the cited constitution, § 7, declares judicial acts in cases of nullity of marriage to be null and void if the defender of the marriage bond does not legitimately intervene in them. With all of these things, he urges, if we add to the matter of conducting the cause...

[*Latin ed. p. 458*]

458. SIX POINTS. It is absolutely necessary that the vow of the defender of the marriage bond be explicitly stated in the judicial records (cf. cited causes from Warsaw and *Analecta Ecclesiastica*, vol. II, page 257). The last deficiency noted in the records of this process appears to be this: such a vow from the defender of the marriage is not found in the records, unless one wishes to consider that brief statement included in the judgment of the Official, as the vow of the defender, by which, through the interlineation, it is stated that the defender of the marriage consented to the judgment being issued. Having established these matters concerning the form of the process: the theologian must propose to himself two questions: 1) Whether there are certain and undeniable arguments that positively prove that the marriage was not consummated in this case; 2) Whether there are sufficient reasons that suggest the dissolution of this marriage, which perhaps was not consummated. Regarding the first question, he states that in this case, the most valid and principal argument for a ratified and consummated marriage is lacking, namely, the examination of the woman, by which the physical signs of inviolate virginity are certainly established. Indeed, the first doctor (Dr. Staub) testifies that in Susanna, the hymen no longer exists, and that not even traces of it can be found, and from this, he deduces a certain sign of virginity, namely, that the absence of the hymen indicates that it is no longer present. To this assertion, he adds, however, that it

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cannot be certainly concluded that Susanna had carnal intercourse, since the hymen may have been destroyed by masturbation or by the medical examination that actually took place. This testimony of Dr. Tanisch does not differ at all in his depositions. He also confesses that the signs of virginity no longer exist in Susanna, and he also adds that the hymen is no longer present. Finally, the third doctor (Dr. Mittweg), after testifying that the hymen on the right side has scars, and on the left side is recently lacerated (which, he believes, is derived from the medical examination carried out on that day), concludes that, in this case, according to his knowledge, it is neither possible to affirm nor to deny that there was intercourse.

[*Latin ed. p. 459*]

TREVIREN. 459 Since the testimonies of the physicians, having undoubtedly demonstrated through physical examination that there is absolutely no argument, nor even a slightly probable one, to be adduced in favor of the non-consummation of Susanna's marriage, it follows that in no way can proceedings be initiated for the dissolution of the marriage, because it would be manifestly a violation of divine law and a completely invalid and meaningless decision. The testimonies of the physicians not only offer no argument for the non-consummation of the marriage, but rather constitute a strong presumption in favor of its consummation. Indeed, a marriage that has been celebrated, following the cohabitation of the spouses, is presumed to remain valid, unless the contrary is proven. In our case, the genitalia were found in a condition that rather suggests consummation. Certainly, the destruction of the hymen can be explained by the masturbation practiced by Susanna before the marriage, as stated by the first doctor. But mere possibility is not a probable argument, much less a certain one. Furthermore, in this case, if Susanna were to confess to such a sin, no credence would be given to her, for she would be alleging her own shame for her own benefit. Moreover, the same doctor assigns as a possible cause the examination of the physicians that took place before the aforementioned examination in court; but this conjecture offers no probable reason. Therefore, it seems much more natural to explain the destruction of the hymen in Susanna by the fact that, after the celebration of the marriage, she attempted consummation. Certainly, very strong arguments are required to refute this presumption. Furthermore, these arguments are reduced to the sworn assertion of both spouses regarding the non-consummation of the marriage, and to the testimony of seven witnesses, who have given their oath in good faith. Indeed, the entire difficulty lies in whether these two arguments are considered to provide completely certain proof, or merely probable proof. However, the assertion of both spouses does not seem to provide that certain proof; for their testimonies are not in agreement. The

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wife, for...

[*Latin ed. p. 460*]

The provided text does not contain any quotation from Tobit 5:24. Therefore, no changes are required.

460. Inquisitor: ”Num vir tui tecum copulam conaturit, et quoties?” Respondet: ”Numquam. Hoc enim mihi non fuit possibile propter tractationem.” Cum denuo a uxore interrogaretur, num membrum virile mariti semel vel iterum saltem ex parte in ipsius vaginam cum aliqua seminis virilis effusione penetravit, in actis iudicialibus ad quaesitum praecisum et distinctum non legitur accuratum responsum uxoris ad verbum datum, sed tantum brevis et obscura responsio: ex quo erui posse videtur quod vel ipsum tentamen copulae locum non habuit, etiam partialis executio coitus non exstitit. Instante iudice: ”Num marito tuo spente vel invita copulam permisisti? Num in actu (coniugali) situm convenientem adoptasti, sin minus, num hoc consulto an per imperitiam accedit?” denuo in actis idem legitur responsum: ”Numquam.” Quae responsio ipsa verba uxoris non videtur referre, sed potius abbreviationem quandam extensoris actorum iudicialium, sed ut constat ex cit. instr. S. C. C. ipsae responsiones partium examinatorum ad verbum sunt scribendae, non abbreviationes quaedam et summariae. Quid iam pro sua parte respondet maritus? Ad questionem: ”Num statim post matrimonii celebrationem (cum uxore) mensam et thorum communem habuisti?” maritus respondet inter alia: ”Dormivimus simul in eodem lecto, postquam ipsa per horam id facere recusavit. Tentavi actum coniugalem, sed rem efficere non potui: 1) quia apertura vaginae fuit nimis arcta; 2) quia ipsa hernia laborabat.” Quaestioni, hisce verbis conceptae: ”Num unquam efficere potuisti, ut membrum tuum virile in vaginam uxoris penetraret?” idem maritus respondet: ”Nunquam. Tentavi tamen decies vel vicies.” Denique ad quaesitum: ”Num uxor tua sponte vel coacta copulam permisit,” in actis legitur responsum mariti: ”Tantum coacte.” Quae responsa mariti imprimis assertionibus uxoris manifeste sunt contraria. Susanna aperte negat vel ipsum tentamen copulae, at maritus, tentamen factum esse sine ambagibus fatetur, imo, decies vel vicies tentamen fuisse repetitum.

[*Latin ed. p. 461*]

TREVIREN. 461. It is conceded, finally, that this was admitted only under duress, and that the wife was compelled to do so; but he who acts under duress, nevertheless acts. Therefore, the assertions of the husband are not consistent, and there is no reason to reject entirely the clear and definite confessions of the husband, which are not favorable to him, while accepting the general and obscure denials of the wife. Wherefore, the wife, by denying the attempt, deviated from the truth and asserted a falsehood. But

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the husband also gives an account of a frustrated attempt, which does not agree with the testimonies of the doctors. For he recounts this frustration from the excessively narrow opening of his wife's vagina. But Dr. Stanb testifies in clear terms that the woman's organs were in a normal condition; moreover, Dr. Tanisch adds that Susanna's vagina was sufficiently wide, "so that even a robust man could enter it," and that the circumference of the vagina did not hinder intercourse with Susanna. Finally, Dr. Mittweg found in the physical examination of Susanna "the sexual organs perfectly suited for the exercise of coitus"; indeed, he adds that one finger, and even two fingers, could be inserted into Susanna's vagina without any difficulty. These testimonies of the doctors demonstrate the manifest falsehood of the difficulty alleged by the husband regarding the excessively narrow opening of the wife's vagina. To this is added the fact that the husband seems to have very strange notions about the penetration of the woman's organs in coitus, for his shameful way of speaking. Wherefore, if he denies that he was able to penetrate his member virile into the woman's vagina, this does not yet prove that he was completely unable to do so, but at least that he was not able to do so completely. Hence, if the question of partial penetration was put to the wife, it should have been put to the husband even more, but this matter is silent in the record. If, then, the husband was asked whether an emission of semen occurred, the question itself was too general and not accurate enough; it should have been asked, as it was in the examination of the woman, whether any emission of semen occurred inside or outside the woman's organs. Therefore, the answer given by the husband: "Certainly not. If I am angry about something, this (i.e., the emission of semen) does not happen," is equally inaccurate and rather evasive, and the reason given about anger is...

[*Latin ed. p. 462*]

462. TREVIREN. The effect of this condition is not easily believed. For, as physicians testify, if a man encounters an obstacle in the woman's womb during the act of consummation, he is rather more aroused to passion and lust. Having considered these observations, it is concluded that there is no certain argument from the testimonies of the spouses to prove that this marriage could not have been consummated, because their testimonies are not concordant, and are subject to difficulties and doubts, and the fact of certain and undeniable physical loss of virginity in Susanna cannot be explained by any probable reason. Therefore, since the testimony of the spouses does not provide full and certain faith on its own, it is scarcely corroborated by the testimony of a seventh witness. For such a testimony is alleged only by one side, namely, the wife; furthermore, in the presence of the defender of the marriage bond, nor were the individual witnesses examined separately, as prescribed by the cited instructions of the Sacred Office. Rather, they all appeared together in the tribunal, and the proceedings contain nothing

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concerning the reasons by which they have this knowledge, nor do they contain anything about the faith and honesty of the witnesses, but they all testify, with a fixed and brief formula, that they believe the assertions of the two spouses in the case of non-consummation of the marriage. The certainty of the fact through such testimonies is not confirmed by true judicial records. Therefore, only the examination of the midwife Thiel and the parents of Susanna remain. However, the examination of the midwife Thiel is of little importance. For she confesses that she never heard Susanna speak of conjugal life before her, and indeed, that she scarcely knows her. As for Francis, the husband of Susanna, he testified that, after contracting a civil marriage with his second wife, he told her that he had not been able to consummate his marriage with his first wife. From the first part of this testimony, nothing is evident concerning Susanna, but the second part merely suggests that the wife gradually denied her husband the marital debt, but that no conjugal act ever took place, which would be sufficient to consummate the marriage, cannot be certainly deduced. Furthermore, such a testi-

[*Latin ed. p. 463*]

TREVIREN. Forty-three years after the civil marriage of Francis, the matter is exceedingly suspicious; for after this admitted fault and scandal of a civil marriage celebrated in the region of Cattolica by a Catholic man, he ought to have alleged some pretext for the matter. From the testimonies of Susannah's parents, it is chiefly gathered that Francis never visited Susannah's father in Le Conquet, nor was he able to consummate the marriage with his wife. However, the father testifies that Susannah told him, when the action of divorce was already pending in the civil court, that she had never had marital relations with Francis; the mother, however, testifies that Susannah said the same thing before the divorce was sought in the civil court, but the mother does not say to whom Susannah said these things. The rest, through the testimonies of Susannah's parents, clearly demonstrate that, in the last period of her married life, Susannah constantly denied the marital duty; for the aversion of feelings between the spouses had already become excessive. From this, it cannot be deduced that, in the early times, when those grave disputes had not yet arisen, the marriage was never consummated, especially since she never spoke to her parents about this matter, and in particular to her mother, except perhaps sometime after the divorce proceedings had begun in the civil court. Indeed, the Sacred Congregation of the Council has rendered judgments in many cases, holding that it is certainly established that a marriage is valid and not consummated, even if the hymen of the wife has been found, at least in part, torn, as is evident from various cases reported in Act. S. Sed. vol. XII, p. 629, XIV, 361, XVII, 367; otherwise, widows or adulterous women would lack all hope of obtaining a dispensation from a valid marriage, even if, from other

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certain arguments, the fact of the non-consummation of the marriage were proven. But in this case, we are not dealing with a widow or an adulterous woman, but with a wife who boasts of being a virtuous virgin and is said to be extremely disturbed even by the lewd talk of her husband. Nevertheless, her hymen is certainly and fully found to be broken, and this certain fact is found in the records of the proceedings.

[*Latin ed. p. 464*]

464. TREVIREN. There are reported explanations, which are at the utmost conjectures of certain physicians, but which do not rest on a probable or certain foundation. However, testimonies obtained from elsewhere are not in agreement, nor were they given in a legitimate judicial form, nor are they from trustworthy sources. Given that these circumstances are so, the theologian believes that a judgment regarding an unconsummated marriage cannot be rendered in this case; for the arguments, at the utmost, are probable, and do not suffice to render a certain judgment. Moreover, he asserts that, if the fact of non-consummation were established in this case, the other requirement for granting a dispensation, namely, a just and sufficient cause, would also be clearly present. For it cannot be doubted that this marriage was not prepared with sufficient maturity and deliberation, and was celebrated too hastily, before the spouses had sufficiently come to know each other. Furthermore, even if the marriage was freely contracted, certain female relatives, who were promoters of this marriage for reasons of propriety, hastened the celebration of the nuptials with undue eagerness. Therefore, Francis and Susanna are excused to some extent, since they did not so rashly and imprudently proceed to the marriage of their own accord, and for this reason are all the more deserving of compassion and grace. To this reason is added the fact that the spouses are evidently of dissimilar character, so that a happy outcome of the marriage cannot be hoped for. For the husband is a harsh man, ignorant of moderation, while the wife is a woman of timid and gentle character. Therefore, it is not surprising that discord soon arose between the spouses, and that there is such a divergence of souls that reconciliation is no longer to be hoped for. The husband himself is in the most grievous danger to his soul. For, having celebrated a civil marriage with another woman, from whom he has already had children, he lives in concubinage, from which he will scarcely be freed unless the previous marriage is first legitimately dissolved. As for Susanna, since there is no hope of reconciliation, and she is hindered from celebrating a new marriage by the bond of the marriage contracted, she has been reduced to a state of forced virginity, and is exposed to the danger of incontinence; but grace,

[*Latin ed. p. 465*]

TREVIREN. The woman is, in the eyes of the Church, more deserving

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of a dispensation than her husband, because, through the perversion of liberty granted by civil laws, she has not yet availed herself of the rights afforded to her. These reasons, indeed, are abundantly sufficient to grant the requested dispensation, both on the basis of the nature of the matter and on the basis of established practice of the Sacred Congregation, which, in similar cases, has issued a favorable opinion regarding the granting of a solution to a valid marriage. Since, from what has been presented thus far, it is not yet certain whether the marriage has been consummated, the theologian concludes that legitimate proofs must be sought and supplemented.

OPINION OF THE CANONIST. Conversely, the canonist, although he admits that neither the declarations of the doctors nor the testimonies of the spouses demonstrate the lack of consummation of the marriage, either because the doctors, after examining the woman's body, declared that the lack of consummation could neither be proven nor disproven; or because the spouses do not appear to be truthful in their testimonies; nevertheless, he maintains that something certain can be concluded from their words, and indeed, something that supports the lack of consummation of the marriage. From the testimonies, it appears, from these very contradictions, firstly, that there is no collusion between the parties, for they clearly disagree on essential matters. The wife denies having attempted intercourse, contrary to the husband's testimony, at least in the year 1892; both, however, always affirm that the act of intercourse never followed, and indeed, in the year 1887, when the husband was opposed to separation. Secondly, it appears that the spouses never consummated the marriage, for the fact that the husband complains about the hernia and the narrowness of the woman's vagina indicates that he did not know his wife, since she neither has a hernia nor a narrow vagina. The lack of intercourse is further confirmed by the impudent words spoken by the husband to the servants, such as: "I will not penetrate her tonight, etc.," and to the wife herself: "Tonight, my dog will be with us in the bedroom; if you are not obedient to me, I will incite him to you."

Why, however, could the husband never consummate the marriage? The doctor who examined her in the year 1886 states: "When the husband of Susannah conquestus claimed that he could not consummate the marriage with her, I examined his records, Volume XXVIII, page 30."

[*Latin ed. p. 466*]

466. THREE WOMEN. The women were entirely well-formed; however, it is probable that the impetuousness of the husbands caused excessive irritability. "But the bad treatment of the husbands appears to have arisen from the impossibility of having intercourse, and this followed, but did not cause, the matter." This is testified to by the parish priest in the years 1887 and 1892, who states that the woman was very angry with her hus-

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band because of the lack of intercourse, and that they quarreled about this matter, and that she complained before others. However, that the fiancé had hoped for a large dowry from the parents, and that when this hope was frustrated, he mistreated his wife, neither the parish priest, nor the parents, nor any of the witnesses mention this. It is easily understood why the woman would especially bring to light this cause, namely, to conceal her own impotence. The canonist asks, what kind of impotence could there be when the doctors have found the woman to be entirely well-formed? And he answers that this concerns an impotence for intercourse that arises from sorcery. There are, he says, those who doubt whether impotence can arise from sorcery, since all impotence is subject to the laws of nature. But, even temptations have their origin in our corrupt nature and follow the laws of nature: "But every man is tempted by his own concupiscence, being drawn away and allured" (Jas 1:14). And yet, "Your adversary, the devil, as a roaring lion, goes about seeking whom he may devour," says the Prince of the Apostles (1 Peter 5:8, 9), and St. Paul (Eph 6:12): "For our wrestling is not against flesh and blood; but against principalities and powers, against the rulers of the world of this darkness, against the spirits of wickedness in the high places." The demon uses the forces of nature to excite temptations; similarly, he can use the laws of physiology to cause impotence. Indeed, impotence can arise from many causes. "Therefore," says Sánchez (lib. VII, dis. xciv), "when these things are present, the demon can use them. Furthermore, two things make a man fit for Venus, namely, heat and spirit. But the demon can diminish the heat, and hinder the spirit, going before them. Add sadness, fear, and also other affections of the mind."

[*Latin ed. p. 467*]

TREVIREN. 467. Affections which transform the blood and affect the spirit of the heart can impede all the powers of venereal desire. But the demon can excite these affections. Since it is able to disturb minds and render men insane... a woman is commonly harmed by mere opinion, or by the injury of fantasies: for a man may approach, and the vigor of the member is not relaxed; but when he attempts to approach, she is suddenly horrified... "Sometimes, however, the demon constricts the female vessel." Therefore, if impotence cannot be explained by any natural cause, and no natural obstacle can be found in the spouses, known in Medicine, this does not mean that impotence should be denied, when the fact of the impossibility of cohabitation is evident. A woman testified that she had married her husband out of a certain affection, and that she had been prepared from the beginning to render the marital debt to her husband, and yet she was never able to consummate the marriage. The husband, when questioned, whether the attempts at copulation resulted in the emission of semen, denied it, saying that excessive sadness prevented such an emission. And yet, the physicians found no defect in the woman's generative organs; and the

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husband already has illegitimate offspring from another. Therefore, the impotence is relative in both, and, as Sánchez says, "if it does not arise from a natural root," it should be considered as an impotence caused by sorcery, as the ancients said. However, concerning the causes which suggest a solution for the unconsummated marriage, it is easily given to believe that many, and indeed serious, causes are present; for there is also a moral impossibility of reconciling the spouses; and especially the exasperation of their minds, when they have never been in harmony, either during the time of cohabitation, or even once; and, above all, the husband entered into a new agreement with his slave before a civil magistrate, and had offspring. Regarding both the unconsummated marriage, and the existence of causes for a dispensation, it is concluded that consultation with the Holy See should be sought in order to obtain such a dispensation.

[*Latin ed. p. 468*]

468. TREVIREN. OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND FROM THE OFFICE. The defender of the sacred bond, examining the merits of the cause, refutes the evidence presented by Susanna, who seeks to demonstrate that her marriage to Francis began, after two months of conjugal life, to remain incomplete, and is entirely invalid; either because the judicial documents, as a most learned theologian wisely observes and skillfully demonstrates, are tainted by the vice of nullity, from the foundation to the very end; or because, considered in themselves, they have absolutely no weight. Susanna, indeed, presents three things. First, the confession of the spouses; second, the testimony of a seventh witness, not from both spouses, but from only one; and third, an examination performed by three physicians on the body of Susanna. However: the confession of the spouses, even if Francis, no less than Susanna, desires the marriage bond to be dissolved, proves nothing, as Sánchez teaches in book 2, disputation 45, number 33. Moreover, no confession is considered in court in favor of the confessors. To this is added the fact that Francis and Susanna speak in a manner that is widely at odds. Furthermore, the testimony of the seventh witness, besides being imperfect, because the complete testimony of the other spouse is lacking, cannot be considered of any value whatsoever, because the witnesses have been treated superficially and entirely inappropriately, as the most learned theologian observes. Finally, the opinion of the physicians, who were consulted, does not support the adverse action in the least, but rather contradicts it. For the physicians did not find any sign of pregnancy, nor any other argument for the virginity of Susanna; but they affirmed that she was not carrying a child. Having briefly explained these things, the defender of the sacred bond concludes, and marvels at how this cause, which is the most hopeless of all, has been able to achieve honor, so that it may be debated before the most eminent and reverend Fathers. With these things established, the purpose is to address

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the following customary matter.

[*Latin ed. p. 469*]

TREVIREN. 469. A question arises concerning whether it is permissible to consult with His Holiness regarding a dispensation from a marriage that is valid but not consummated, in a case of this nature. RESOLUTION. After mature examination by the Sacred Congregation, and after considering the matter, it was decided on July 20, 1895, to respond: It is not established that the marriage was not consummated.

ALBINGA. ENSIS MARRIAGE. August 17, 1895. SUMMARY OF THE FACTS. On September 4, 1872, after previous public announcements and proclamations, and with all other legal requirements duly observed, Francis and Anne, both of the Diocese of Albenga, were married before their own parish priest and witnesses, and they desired that the marriage be also ratified before the civil authorities on that very day. However, to their great sorrow, they were unable to consummate the marriage so solemnly ratified. The newly married couple, eager to fulfill their marital duties, believed they were about to begin their life together; but after a short time, the husband realized that he was unable, despite his best efforts, to penetrate his wife. He did not wish to reveal this obstacle to his wife, whom he loved, lest it should deprive her of the joys of marriage; but, as he knew that his wife herself was experiencing difficulty in fulfilling her marital duties, he finally revealed the unpleasant truth and lamented the lack of joy in the beginning of their marriage. However, there was good hope, as a doctor promised that the obstacle could be removed from the woman through a surgical operation. It was a matter of a membrane that was easily obstructing the vulva, and which, it was believed, could be removed. However, what happened? Although the doctor attempted to make an incision in the aforementioned membrane with the consent of the husband, he found it to be so resistant that he was forced to cease his efforts.

[*Latin ed. p. 470*]

470 In Albenga, fearing an excessive flow of blood, it was determined that the operation on the uterus should not be performed, as the entrance to the uterus did not open. With the wound covered, the couple again attempted to consummate their marriage, hoping that the obstacle had been removed by the aforementioned operation. However, the couple easily perceived that the original impediment still existed. They then believed that the impediment was due to permanent impotence, which, later, physicians determined was not only due to the shortness of the vaginal canal, as Aloysius Fontana initially suspected, but also to a leathery and resistant membrane that obstructed the vagina, the incision of which could not be performed without risking life, but also to a deficiency, or involution, or even atrophy of the uterus. Therefore, Francis, due to his natural inclina-

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tion to procreate, and also in order to dispel the scandal of a supposedly infertile marriage, which was being spread among the people, as it was said that two men had celebrated the marriage, brought Anne before the civil court on June 15, 1877, four years after the marriage was celebrated. From the procedural records compiled by this first-degree Tribunal, it is proven, as the plaintiff's lawyer proposed, that: 1. Before the marriage of the aforementioned Francis and Anne, the parents of the daughter were aware of an organic defect in the daughter, which rendered her incapable of fulfilling the duties and exercising the rights of marriage. 2. That Anne herself suffered from recurring illnesses due to a lack of menstruation, and only improved when blood was drawn from her by leeches or other means. 3. That, during the marriage, Dr. Aloysius Fontana, at the request of Anne, was asked whether he could, if possible, remove the impediment to enjoying the benefits of marriage, and whether a surgical operation could not at least alleviate the defect of the aforementioned genital organ. The Tribunal judge solemnly pronounced the sentence regarding the nullity of the marriage between Francis and Anne on December 11, 1877, which had been formally celebrated on September 4, 1872. Without any appeal following this sentence, Francis, exercising his freedom, entered into a civil marriage, which they call a marriage, with a certain Marina, from which, in due time, he had offspring.

[*Latin ed. p. 471*]

In Albenga, the year 471, he [Francisco] learned that those united to him were not bound by the dignity of marriage, but by a society of wickedness. Repenting of his actions, he desired to celebrate a true marriage with Marina, according to the institutions of the Church. Therefore, he instituted a cause before the Albengan court against Anne on the sixth day of September, 1878, in order that the marriage contracted with her six years prior might be declared null, due to antecedent and perpetual impotence. After hearing the conclusions of both the defender of the marriage and the petitioner, the judge, specially appointed, and also delegated by the Most Eminent Cardinal Caietano Alimonda, Administrator, declared, by his judgment, that the marriage of Francisco with Anne, celebrated on the fourth day of September, 1872, according to the form and rite of the Holy Roman Church, was null ab initio, due to a congenital and perpetual impediment of impotence, and therefore left the man free to proceed to other vows. Against such a judgment, the defender of the marriage appealed to the archiepiscopal court of Genoa. That metropolitan court, furthermore, did not perform any act, as it was its duty, to provide a resolution to the cause, until the year 1894, that is, three years after the last appeal, when the matter was, indeed, remitted to the Sacred Congregation of the Council.

A SYNOPTIC DISCUSSION: THE OPINION OF THE THEOLOGIAN.

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Preliminary Remarks. To resolve a marriage, the Consultor must consider two paths, namely, that of justice and that of grace. The first is to demonstrate the nullity of the marriage in question, due to an absolute and perpetual impediment, thereby invalidating the marriage contract itself. The second is to demonstrate that, although the marriage was valid, it was not consummated, and that legitimate reasons exist in the case to obtain its dissolution. I believe the first path can be approached as follows: for a marriage is null if, whether absolute or relative, impotence is considered perpetual, and if it existed prior to the marriage. However, Anne's impotence was perpetual and absolute...

[*Latin ed. p. 472*]

472 The woman from Albenga was afflicted with a disease, and her marriage to Francis preceded this affliction. Therefore, there was no consummation. The opinion of all the Doctors is most certain on this matter, as is stated in chapter 2 of *Quod si*, title *De Matrimonio*, canon 1, which reads: "Those who are impotent are not considered capable of contracting marriage." And this is especially true if the impotence is prior and permanent, as is stated in chapter 3 of the same title, where it is written: "If it is established that the defect was contracted from nature, and cannot be cured by the help of physicians, you should grant the man the freedom to take another wife." The reason for this is that, as Saint Thomas says, in marriage there is a certain contract by which one party is obligated to the other to fulfill a marital duty; therefore, just as in other contracts it is not proper for someone to obligate themselves to something they cannot give or do, so too it is not proper for a marriage contract if someone is unable to fulfill the marital duty. *Supplementum*, page 3, question 8, article 1, *ad R*. It cannot be objected that carnal union is not essential to the essence of marriage in the opinion of the Church, for, as the same Angelic Doctor continues, although the carnal act of union is not part of the essence of marriage, the power to perform that act is part of its essence, because through marriage, each spouse is given the power over the other's body with respect to carnal union, *ibid.*, ad 1. These authorities are based on what is said in Genesis 2, verse 24: "Therefore a man shall leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh." And Christ, referring to these words, concludes: "Therefore no man is to separate them" (Matthew 19, verse 6). However, spouses do not truly become "one flesh" except through carnal union, for which it is necessary that both parties be able to perform that act, as they promise to do; for an impossible obligation is no obligation. *Impossibilia* 185, *ff.*, *de R. I.* and *Reg. VI* in *Decret.* Therefore, whenever the power for such a union is lacking, the parties cannot become "one flesh"; and therefore, their contract should not be considered valid. Thus, the common opinion of both theologians and jurists is that permanent, whether absolute or relative,

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impotence...

[*Latin ed. p. 473*]

ALBINGANEJSIS 473 concerning the invalidation of a marriage: We deem it necessary to proceed further in demonstrating the main point of our argument, and to advance to the lesser truth. And first, Anne suffers from a permanent impotence, which is congenital, as is the case with our Anne. This is established by: a) the testimonies of the physicians who examined Anne's body, confirmed under oath; b) the testimony of the husband, given under oath before the ecclesiastical judge; c) Anne's own conduct before both the civil and ecclesiastical tribunals; d) the sworn testimony of seven witnesses regarding the common opinion among parents, friends, and neighbors concerning Anne's impotence. Two experts agree that Anne suffers from an impotence that is sufficient to demonstrate and prove the impotence, as Fulvius Pacian states in his work, I. 2, chapter 2, paragraph 26: for in the chapter concerning proof, at the end, it is said that seven midwives were used, and the text of civil law, I. temporibus 1 § 8 ff. concerning the inspection of the womb, is easily understood. Regarding the first point, Sánchez writes: "The chapter concerning proof does not mention seven midwives, as if so many are necessary, but because they were used for greater caution, and it narrates a fact, and therefore it is more a narration of a fact than a legal prescription, as Schmalzgrueber states in P. III, title XV, concerning frigidity and impotence, and Gdossad agrees (in can. nec aliqua V. Obstetricum 27, q. 1)." Barbosa in the chapter concerning proof, cited, n. 7. Reiifenstuel, n. 36, and others state this commonly. Regarding the first part, it should be said, with Schmalzgrueber and Sánchez, ibid., that there is a particular prescription in the case in which a woman claims to be pregnant; then she is considered suspicious and prejudiced against the heirs; but when she does not claim it, or even denies it, according to the Glossa, three are sufficient. But in our case, there is no such situation.

[*Latin ed. p. 474*]

474. In Albenga, a decision is reached, because Anne never engaged in marital relations: therefore, neither seven nor five expert testimonies were required, but the testimony of two or three suffices, according to the saying, "Every word is established by the mouth of two or three witnesses." Furthermore, the very woman is involved, who confesses her inability, according to the testimony of Doctor Fontana, who, upon being requested by her, first examined her body; but Doctor Fontana, who, in the initial examination, believed that the impediment could be removed by the remedies of his art, after the operation, affirms the contrary, stating that a new incision cannot be made without endangering her life. This further demonstrates most clearly, and especially if compared with the testimony of Doc-

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tor Moraglia, that Anne contracted an impediment to consummation by nature, and that, if she cannot be helped by the aid of physicians, it must be concluded, according to chapters 3 and 6 concerning Frigidity and Malefactions. But Francis, Anne's husband, confirms the matter in his testimony before the Ecclesiastical Judge, given under oath, in which he affirmed that the marriage had not been consummated. And there is no reason to suspect falsehood in this man's testimony. For the seventh group of witnesses, the relatives, all agree regarding the honesty of Francis, whom they recognize as incapable of perjury, in so important a matter; nor should he be suspected of any deceit towards his wife, since the same witnesses unanimously confirm that he has always pursued Anne with excessive love, and that he has never sought to separate himself from her, except after being certain of her inability; which is certainly confirmed by the long period of cohabitation, even after the knowledge, with the faith of the physicians, of the supposed wife's permanent inability. Indeed, if the matter had not been so widely publicized among the people of all Liguria, perhaps a cause for the nullity of the marriage would not yet have been brought. "Indeed," says the Consultant, "here we are not dealing with a matter of slight importance, but with its complete absence, which could not be removed by surgical operation." And Schmalzgrueber says: "If, according to the judgment of experts, there are indications and signs of inability, it is certainly and evidently the case physically, for example, if a man lacks testicles or a penis, or if a woman..."

[*Latin ed. p. 475*]

In Albenga, if it is clearly evident that a woman is afflicted with a disease that renders all intercourse impossible, the marriage must be dissolved without delay or further investigation or formalities. It will not be necessary to administer an oath to the spouses in this case, but it will suffice if this fact is attested to by physicians and others who observe such signs; Glossa in c. 6 h. t. V. Matrona Abbas ib: n. 12. Sánchez lib. 7 de matrim. D. 107, n. S. Gustrer c. 120 de matrim, n. 3. Pant. lib. 7 cap. 66, n. 1. Palatr. 28, D. 4, p. 14 § 9, num. 3. Vivian, in c. 1 v. Sed si h. t. Barbosa ib. n. 2 et in c. 5, n. 8. Vallens. hic n. 5. EngL n. 6. Zoe n. 4. Pirhing n. 16, n. 1 fin. "Wiestner n. 51. König n. 12. Reiffenstuel n. 42. P. Schmier^. 3 de matrim, cap. 2, n. 149. The reason is that in such a case, the nullity of the marriage is certain, and this is contrary to natural law, which permits carnal intercourse. Tus Can. Univers. P. III, t. XV de Frigid, et M ale f. n. 78; this is even more so to be said of the marriage of Anne with Francis, if she lacks the use of her marital rights according to the testimony of experts. Furthermore, Anne's conduct in these matters, both in civil and ecclesiastical courts, clearly demonstrates her impotence, which she herself has experienced and knows, as is clearly evident from the fact that, without any prior agreement with her husband, she went alone to Finarium near the sea, to consult with Doctor Aloysius

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Fontana about her difficulty in intercourse. From him, she learned that her impotence could not be cured by medical means. And therefore, when summoned to court, she never actually appeared, nor did she offer an excuse for being prevented from doing so; and I believe that all of this constitutes a confession of her condition, if she still needed to prove it. But is it to be feared that there was collusion between Anne and the plaintiff, so that the defender of the marriage might argue against the judgment issued by the ecclesiastical judge? What then? Surely, no one sane would collude in their own certain detriment! How could a woman who naturally desires a husband collude with him to lose him and be rejected by God from all hope of obtaining another? Would any man wish to receive as his wife a woman who is impotent, and who has been declared by both the civil and ecclesiastical tribunals to be such?

[*Latin ed. p. 476*]

476 In Albenga, no one is considered sane. But how can collusion be suspected in the case of Anne, when she herself exhibits the following: 1° She presents herself to the examining physician, aware of the difficulties involved in the examination? 2° She submits to the physical examination? 3° She promises, in a civil suit, to undergo further medical examinations, in which her congenital and permanent impotence, due to the obliteration of the vagina, the absence or atrophy of the uterus, is again asserted? Moreover: 4° Anne herself does not provide the required witnesses on her side, although others were willing to testify, as she herself writes; because, during the day, she was supposed to be at the court in Pietra Ligure. All of this not only excludes collusion, but does not even allow for suspicion. Furthermore: 5° In the civil case, Anne's advocate, Francis, a man captivated by another woman, and without any valid reason, claims that he is compelled by his conscience to provide support to the woman. From this, it is clear that Anne acted against her husband, which completely excludes the suspicion of collusion. And if collusion cannot be admitted in a civil case, it cannot be suspected in a case brought before the ecclesiastical tribunal. Therefore, Alice refused to attend the hearing for this reason: she knew that three experts had already unanimously agreed on the permanence of her congenital impotence, and she had no hope (indeed, she felt it herself!) that this could be disproven by new examinations of her body, and therefore she disobeys the summons from the judge to appear in court; and perhaps rightly so; for she was not persuaded that any benefit would come to her from that, but rather, she was certain that a new, and even greater, detriment would result. Moreover, there could be no trust between the advocate and his client, since she knew that there was no valid argument against the fact, and that the permanence of her congenital impotence, which made it impossible for her to fulfill her marital duties, could not be removed by the words of a lawyer, nor could it be cured

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by more effective surgical instruments. Although there is no confession from the woman regarding the unconsummated marriage, which is not necessary, given the testimony of the experts, confirmed by oath, regarding her perpetual impotence, and therefore,

[*Latin ed. p. 477*]

In Albenga, a woman named Anna, born and living with an absolute inability to engage in marital relations, nevertheless presents a situation that requires examination, both from a civil and an ecclesiastical perspective. Our conclusion is further strengthened by the testimony of numerous witnesses, relatives and neighbors, who all attest to Anna's well-known inability to engage in sexual intercourse. Now, if the signs of Anna's absolute inability to engage in marital acts are so certain, that not only her husband, who has never been able to penetrate her, but also physicians who have examined her body, and especially Aloysius Fontana, who unsuccessfully attempted to remove her impediment through manual manipulation; indeed, even the midwife, who treated the wounds in her sexual organs with medications after a surgical procedure intended to remove the obstacle, have sworn to it; then it seems that there is no room for doubt regarding the nullity of the marriage, contracted between Francis and Anna on September 4, 1872, due to the perpetual and pre-existing impediment of Anna's inability. This is clear from Chapter VI of the Fraternities concerning frigidity and witchcraft, and is confirmed by the judgment of the authorities, as mentioned above. We are not dealing with any kind of impotence, but with an absolute and certain pre-existing impotence; one that is congenital to Anna and inherent in her nature, and which cannot be remedied by medical intervention, let alone without risking her life, but without any hope of healing the defect, for it concerns the absence of a uterus, or its atrophy, along with the obliteration of the hymen. And if this cannot be removed by surgical instruments, how could the presence or development of the uterus be achieved through medical means? Therefore, the nullity of the marriage must be declared. And because, according to the chapter on absolute impotence, Anna, being so impotent, should not be allowed to take other vows. OPINION OF THE CANONIST. In the first place, it seems necessary, says the Consultant, to accurately determine the nature of the defect with which Anna is afflicted in her genitals. Since she has been contumacious in the ecclesiastical judgment, and the husband, to whom the witnesses testify, can only provide a general account...

[*Latin ed. p. 478*]

478 If someone from Albenga has spoken of impotence, there remains no other recourse than to present the testimonies of physicians to establish the truth. And first, Doctor Fontana, after examining the body of Anne, asserted that she possessed a congenital defect, preceding marriage, which

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entailed absolute impotence, not only with regard to generation, but also with regard to coitus on the part of Anne herself. This opinion is followed by the expert Moraglia, and the midwife. With these facts established, it seems appropriate to recall the provisions of canon law. It is well known, according to the Sacred Canons, that impotence preceding and perpetual, which dissolves marriage, is not impotence in generating, but rather impotence in cohabiting, by which, namely, a man and a woman cannot be carnally united. The inability to have offspring, in the case where intercourse can be consummated, is nothing other than sterility, from which it does not necessarily follow the nullity of the marriage, since even with this present, the secondary end of marriage is attained, namely, the regulation of concupiscence and mutual assistance. St. Thomas, 4th Dist., 34th Question, 1st Article, 2nd Conclusion. Schmalzgrueber, Book IV, Title XV, No. 30. Sánchez, Book VII, Dispensation 92, No. 36. St. Alphonsus, Book VI, No. 1095, etc. Furthermore, in the case of a woman, the absence or atrophy of the uterus, even if it can be certainly diagnosed in practice, which many physicians deny, should be considered as mere sterility, a more probable opinion, which is especially defended by more recent authors, as taught by Eschbach, Physiological Theology, I, S, D'Annibale, Moral Theology, P. 3, No. 431 (9). Gasparri, On Marriage, No. 514, etc., because even if the uterus is absent, the introduction of the male seed and its reception into the vagina, in which the power of coitus consists, can be perfectly verified. Indeed, if a woman has the entrance to the uterus closed or obstructed, to the extent that neither menstrual flow can exit, nor can the life-giving sperm enter, she would not be considered impotent in cohabiting, but only in generating. This matter was excellently demonstrated by him before the Sacred Congregation in his opinion in the Salernitan marriage case of August 9, 1862, by Cardinal Tarquini, whose words it seems appropriate to transcribe here: "The faculty of cohabiting, as conceived in canon law, and which is sufficient for the consummation of marriage, consists in this act..."

[*Latin ed. p. 479*]

ALBINGANENSIS 479 concludes that the mingling of semen within the natural vagina is completed, according to Can. Extraordinaria, c. 35, q. 2, with the addition of the Glossa, St. Bonaventure in 4 Sent., dist. 41, q. 1, and in the Council; St. Thomas in the same place, a. 1, question 4, ad 2; Sánchez, De Matrimonio, book 2, disp. 21, n. 5. For indeed, the spouses become one flesh, and the secondary act follows the purpose of marriage, which is the calming of concupiscence. Truly, all of these things, namely the calming of concupiscence, the mingling of semen, and thence the joining together into one flesh, are completed within the vagina itself, so that there is no necessity of penetrating the womb. Therefore, even with a closed womb, provided the vagina is free, the faculty of coition remains complete, insofar as it is conceived separately from the faculty of generating, and therefore,

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if it is exercised, it necessarily completes and strengthens the marriage. Furthermore, Pontius, in De Matrimonio, book VII, chapter 60, n. 3, when presenting a careful definition of the inability to cohabit, says: "Therefore, I call the inability to cohabit a true inability to sow seed within the female vessel, whether the seed is sterile by its own nature, or fertile. He does not say that it is an inability to transmit the seed into the womb, but an inability to deposit the seed within the female vagina; so that, even if the seed is deposited in the vagina, and even if the womb cannot receive it because of a closed opening, the faculty of coition nevertheless fulfills its power and produces a perfect act." This doctrine is confirmed by the concordant opinion of the Doctors in a similar case, namely, in the case in which a woman does receive the male seed, but does not retain it. Similar, I say, to this is our case. And what is the reason, that in the case of a closed womb, which is our case, doubt is raised about an impediment to cohabitation? Namely, because the male seed cannot be transmitted into the womb. But the same is presented in another case, in which a woman barely receives the seed and immediately expels it, and therefore does not transmit it into the womb... And indeed, this is also hinted at in the very Scriptures, in which, it is clear, to have a closed womb is the same as to be truly and properly sterile, which, indeed, together with true marriage, is altogether incompatible, 1 Kings 1, 5, 6; but to open the womb, on the other hand, is...

[*Latin ed. p. 480*]

480 In Albenga, before God, in whom all things are possible, this is affirmed, just as it is possible to make fertile that which is barren, as in Genesis 30:22, etc. "This is also confirmed by practice and, therefore, by the doctrine of the Church. Indeed, in judgments concerning impotence, the Church has customarily sought only those indications that pertain to the external opening of the vagina, such as its width, the absence of the hymen, or myrtiform growths. However, it has never been heard of the Church ordering that the entrance, whether of the uterus or otherwise, be tested with a finger or any other instrument; which, however, should have been done, if an obstruction of the uterus would invalidate marriage. I will add something further: at least until the time of Vallisneri, who flourished at the beginning of the last century, it was unheard of for anyone to bring a judgment concerning marriage based on such a cause; since he lists among the causes of sterility that which, up to his time, was either unknown or neglected. *Historia della Generazione dell'uomo* p. 3, ch. 4, n. 33. Thus, the common sense of the people is in complete agreement with the judgments and doctrine of the Church, with the testimonies of the sacred Scriptures, with the opinions of Doctors, and with the intrinsic nature of the matter itself." Furthermore, it could be added that if the transmission of the male seed into the uterus were required for the essence of the act of coition, then a true carnal union and, therefore, the consummation of marriage would

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be impossible with a woman who is pregnant. Indeed, it is commonly held by both ancient and modern physicians that the mouth of the uterus, at least in the earlier months after the conception of the fetus, is closed, so that there appears to be no difference in relation to intercourse between such an occlusion and that which arises from a natural defect. It will certainly not be easily admitted that pregnant women are incapable of carnal intercourse, since it would then seem to follow that they are committing a sin by being with their husbands, and other things would follow that would completely undermine the teaching of theologians on this matter. Therefore, it is clear that, as stated by the learned Eschbach in his work, *op. cit.*, disp. 1, cap. 5, art. 1, conjugal intercourse, by which spouses become one flesh, is that by which...

[*Latin ed. p. 481*]

ALBENGA, NENSIS, 481. The male seed enters the female vagina, and therefore, definitions of impotence which are less precise, or at least doubtful, should be considered, and those which are more commonly used, which define it as an inability to engage in a union suitable for procreation, or to achieve a perfect union, etc. Having expounded what has been said thus far, it is now clear what I think regarding the marriage of Francis with Anne. Furthermore, since the doctors Fontana and Moraglia did not perceive the existence of a uterus in the body of Anne, its absence would be stated, but this does not necessarily prove impotence in the act of coition, but only impotence in procreation, which is often confused with sterility, and does not necessarily invalidate a marriage. The same should be held regarding the other defect, namely, the occlusion of the uterine opening. For even with this obstruction, if the male seed enters the proper place, namely, the vagina of the woman, the conjugal union is perfect, and the mingling of bodies occurs. Nor am I greatly disturbed by the opinion of the two doctors, who, with one voice, declared Anne to be impotent both in procreation and in coition, due to the aforementioned defect. Besides the fact that we are not dealing with experts, who can strictly be considered, in the proper sense of the law, to be judging rather than testifying, it must be noted that they expressed their opinion according to the sense of civil law and the practice of lay tribunals, and therefore their words should be considered with regard to the facts, and not with regard to the judgment. It is evident that civil authority, with impious audacity, has presumed to legislate on a matter that pertains solely to the Church, and has decreed, in a very general way: "Manifest and perpetual impotence, if it exists prior to the marriage, can be presented as a cause for nullity by the other spouse." (Cod. civ. it. art. 107). However, in each individual case, it must be judged by tribunals, whose judgments in this matter are known to be far from uniform. Certainly, they are often far removed from the prescriptions of canon law. It is sufficient to mention the case of a woman concerning

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whom the Acts, Volume XXVIII, page GO C XXXII, speak.

[*Latin ed. p. 482*]

482 In Albenga, both testicles were completely removed, a condition for which the marriage is valid according to the decision of the Holy Office of February 3, 1887, from which it follows that there is only impotence in procreation, not in the ability to have intercourse. However, this case, as described by Koeberlè and Ziino in *Medicina Legale*, book 3, article 2, paragraph 174, is undoubtedly considered by lay judges as "a valid argument for annulling the marriage, under the legal heading of manifest and incurable physical impotence." Nevertheless, in this matter, I have serious doubts as to whether, even considering the sense of civil law, the opinion of the two doctors fully aligns with the teaching of wiser and more authoritative tribunals. Indeed, Ziino himself, in the aforementioned passage, paragraph 175, states: "Given a woman with a vagina, albeit narrow, and with external genital organs, albeit deformed, impotence, in the sense of the law, cannot be alleged or demonstrated, since one would enter the realm of mere sterility, where there is much that is arbitrary and hypothetical." Assuming that Anne is not impotent in the ability to have intercourse due to the absence of a uterus or an obstruction, the imperfect conformation of the vagina remains to be considered, and it must be determined whether this defect prevents marital intercourse between the spouses. I preface this by stating that, given the nature of the case, the question of impotence is so closely connected to the question of the lack of consummation of the marriage that both must be resolved in a single consideration, in order to obtain the Most Holy dispensation. For, it is beyond all doubt that Francis and Anne, as he himself stated, have lived together for four years and have repeatedly engaged in marital relations; if a defect in the woman's genitals did not prevent the mingling of bodies, then both impotence and lack of consummation will vanish into thin air. Therefore, if the woman lacked a vagina, as if she lacked the natural vessel in which semen should be shed, the marriage could certainly not be consummated, and there would be no reason for the woman's impotence, as all Doctors hold and the Sacred Congregation of the Council affirmed in the aforementioned Salernitan case on Matrimony of August 9, 1862. However, as the doctor Moraglia says, "the orifice of the vagina exists," albeit through a channel that, ordinarily, is...

[*Latin ed. p. 483*]

In Albenga, a case has been found involving 483 women, which is somewhat shorter. What then? Is the length of the vagina such that it does not allow for the completion of the act of copulation in the canonical sense? I confess that I am ill-equipped to resolve this thorny question. This is even more so because certain things are lacking which seem necessary for understanding. For example, it is not definitively known how far internally

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the vagina of Anne extends, whether it is 4 inches, as reported by Doctor Fontana, or 6 inches, as stated by Doctor Moraglia, nor is it established whether, considering the dilation to which those genital parts are subject under the influence of sexual desire, there is a proportion between it and the penis of the man, whose body has not been examined, so that the insertion of the member can take place, which is sufficient for the consummation of marriage. Given these circumstances, I believe that it would be advisable to obtain an expert opinion on the reports of Doctors Fontana and Moraglia and others, as decreed by the Sacred Congregation of the Council in the aforementioned case in Salerno, on January 24, 1871, and in several other cases. As for me, it is sufficient to note the following. On the one hand, it must be remembered that the woman, at least after some time, had experienced something in a carnal act, from which she concluded that the marriage was not being properly consummated, and this was the reason why she first went to Doctor Fontana. Likewise, the opinion of the civil court and the opinion of the doctors must be considered, which, although not legally binding for us, nevertheless raise doubts about the possibility of conjugal intercourse, and have led to the most miserable condition of the spouses. On the other hand, it cannot be denied that there are other things that, according to the doctrine explained above, suggest the consummation of the marriage. Indeed, it is certain from the doctors' reports that the external genital parts of the woman do not exhibit any deformity, that the hymen no longer exists, and that the vagina, although somewhat short, is open so that it can receive the man's semen. Furthermore, Francis stated that, for almost a year before the woman went to the doctor, he had frequently engaged in marital acts and that he believed that "things were going well," and then, for another three years, he...

[*Latin ed. p. 484*]

484 The man from Albenga did not abandon his conjugal union, until he divorced his wife; not because he was unable to consummate the marriage carnally with her, but because "as the aforementioned things were being discussed in the town, many accused me of being excessively charitable, as I was told by one and another, because I continued to live with her, and they publicly said that I could take another wife; thus, I came to the determination, etc." Furthermore, these things indicate that the man did not doubt the consummation of the marriage before hearing the doctor, and afterwards, he even claimed to have experienced satiety from marital intercourse, which, indeed, seems to exclude the possibility of a defect being found in the woman's vagina that would prevent intercourse. Having observed these things, there is no need to return to the statements of the witnesses regarding the woman's impotence, whether because they show an opinion reported by some that "there was a marriage between two men, that Anna was half man and half woman," which is too far from

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the truth, or because it is derived from rumors that persisted after the doctor, Fontana, was consulted in Pietra Ligure, and what he did and said revealed more or less of the truth, and therefore, it does not add any further argument to the judgment of the doctors.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, BY OFFICE.

He attempts to dissolve the marriage bond, which Francis, aged 29, contracted on September 4, 1872, with Anna, who was 17 years old, by claiming that the wife is unfit for the conjugal office. The judge of Albenga issued a sentence on May 29, 1879, in accordance with Francis's wishes. This sentence was signed by a learned theological consultant; however, an outstanding canon law consultant rightly opposed it. Indeed, according to the opponents, Anna is unfit for the conjugal office because she lacks a uterus. However, this reason, and more than this reason, is flawed in law. As far as the facts are concerned, according to the opinion of many archpriests, as the best canon law consultant wisely points out, in practice, it is never certain to diagnose the absence of a uterus.

[*Latin ed. p. 485*]

In Albenga, 485, or perhaps due to atrophy. Currently, in this case, two physicians who have examined Anne's body believe that the absence or atrophy of the uterus is more likely than certain. However, the leading authorities in the art of healing hold that the uterus is indeed necessary for generating offspring, but not at all for coition. For coitus is perfected in the vagina; and in the present case, although it may be somewhat shorter than usual, it is not lacking. Nor can there be any place for a dispensation concerning a valid marriage. For, since the uterus is not necessary for a perfect union, the marriage in question is certainly valid, consummated, and perfected. If, however, you believe that conception is not possible without a uterus, and that the absence or atrophy of the uterus is established in the present case, which I consider to be contrary to truth, then the marriage would not only be unconsummated, but also invalid. Given these considerations, the following questions have been proposed for consideration: 1. Whether the opinion of the Albenga court should be confirmed, and whether the answer should be negative. 2. Whether consultation should be sought with Sirio regarding a dispensation concerning a valid but unconsummated marriage in this case. RESOLUTION. After discussion by the Sacred Congregation, on August 1, 1895, it was decided to respond: "The opinion of the more experienced physician should be sought, who, after examining the reports of the physicians Fontana and Moraglia, will state whether it is established that Anne suffered from a prior, permanent, and

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incurable impotence..."

[*Latin ed. p. 486*]

486. ARIANEN. ONERUM. Die 20 Iulii et 17 Augusti 1895. Concil. Trid. Sess. 24, c. 12, *De ref.* COMPENDIUM FACTI. In Cathedrali Ecclesia Dioecesis Arianen, cum singuli canonici propria et distincta praebenda non fruantur, ex massa communi ope distributionum, reditus beneficiorum percipiunt. Non secus ac alia Capitula, Arianense Cathedrale Collegium direptiones passum est legum eversivarum Regni Italici; quare inter ceteras usurpationes et ferre debuit in bonis massae communis taxam trigesimi pro centenis (30%). Verum ipsum Capitulum huiusmodi retentionis obtinere potuit restitutionem, docendo, praebendas non attingere reditus Libellarum 1600, quamobrem immunes esse debebant vi ipsarum legum, a praedicta taxa.

Re quidem vera Fiscus singulis undecim Canonicis restituere coactus est reditus libellarum 240. Postea vero ipse Fiscus certior factus, quod praebendae Canonici Thesaurarii alia unita esset sub titulo - S. Petri de Reclusis, - reddens Libellas 1249, adeo ut, cumulatis reditibus, iidem excederent Libellas 1600, portioni Canonicali Thesaurarii taxam trigesimi pro centenis statim applicavit, exigens praeterea ut in praeteritum indebite percepti fructus restituerentur pro rata, tum ab hodierno Thesaurario tum a defuncti Thesaurarii haeredibus.

Praebenda vero S. Petri in Reclusis taxae huius diminutionem iam subierat. At Thesaurarius hodiernus nec non dicti heredes etiam iudicialiter condemnata ad hanc solutionem, contra capitulum regressum habuerunt, postulantes quod pro rata deficientium redituum, diminuerentur portionis canonicalis onera. Quod tamen praestare negavit Capitulum, asserens, se damnum pati non debere a Fisci usurpatione patrata exclusive et expresse intuitu canonici Thesaurarii. Inde exorta praesens controversia. Episcopus de more pro infor-

[*Latin ed. p. 487*]

ARIANEN. After consulting with 487 bricks and a vote, he reported: The Chapter of Arianen does not have individual endowments, but a common fund, from which the canons receive equal portions. The Canon, however, has a treasury, in addition to the aforementioned portions, and also a specific endowment with its office, and particular obligations. The canonical quota of the treasury has been reduced by 240 livres each year, through the intervention of the Demesne; so that the canonical treasurer, for the past year, the present year, and future years, receives 240 livres less from the common fund than the other canons. For the years from 1873 to 1893, the present treasurer and the heirs of the previous one have been condemned by the Demesne to the restitution of 4500 livres, and to the rejection of the expenses of the lawsuit amounting to 2200 livres. The current dispute

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between the treasurer and the Chapter is that the treasurer, while accepting the reduction of 240 livres, demands that the taxes be waived, which correspond to the aforementioned reduction made in his canonical endowment.

SYNOPTIC DISPUTE. The Chapter, invited to assert its rights, presented its arguments, which, however, can all be summarized in the reasoning already outlined; namely, that it is not just for the other canons to suffer a loss that the treasurer, although unjustly, has suffered alone.

RIGHTS OF THE TREASURER. But, on the contrary, it must be considered that this case, although appearing somewhat different in appearance, has already been presented to the Sacred Congregation several times, and has always been resolved according to the same principle. Indeed, the Sacred Congregations have noted that such usurpations of funds from common funds are in no way to be admitted in order to alter the rights and institutions of individual endowments, but must be considered as thefts, to be borne by each in proportion, without regard to the intention of the Demesne, whether to diminish one endowment rather than another, or to increase or enrich one rather than another. Therefore, the jurisprudence of the Sacred Congregation is constant. Thus, in Theanen. - Regarding the allocation of revenues - on June 8, 1889 - and in Parmen. Distribution - on June 26, 1886, as well as in Cuneen. Regarding the allocation of revenues.

RIGHTS OF THE CHAPTER.

[*Latin ed. p. 488*]

488. Arianen, die 30 Maii 1891, et in Aquipendien. – Concerning the adjudication of revenues, die 24 Ianuarii 1894. (1) In Theanen, a case arose which was very similar to the one now proposed. For, of the 26 canonical offices which constituted that Chapter, 12 were reduced, and, in addition, surviving assets were taxed at 30 per thousand; and although a partial restitution of the revenues of this tax was subsequently made, it was done in such a way that it increased the endowments of the poorer offices, which gave rise to a dispute between eight of the poorer canons, who approved of and accepted the distribution of revenues made by the government, and four others who rejected that division, considering it to undermine the legitimate endowment of the offices. The question was proposed to the Sacred Congregation of the Council, under these doubts: I. Whether the restitution of that portion, which the government had previously deducted on account of the tax of 30 per thousand, ought to be ceded in favor of all the canons of the Chapter, or rather, only of eight of them, in this case; II. Whether the fruits of the same portion, accumulated from the year 1813 to the year 1886, which the government has recently restored, ought to be divided among all, or rather, only among the eight canons, in this case; and it decided as follows: – Regarding I, affirmatively to the first part, negatively

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to the second. Regarding II, affirmatively to the first part, in proportion to what is due to each, negatively to the second. – In Parma, in a similar case, the Sacred Congregation of the Council allowed the canons to maintain the new distribution of revenues introduced by the government, "for the sake of expediency, according to the petitions, with the understanding." In Cuneen, the following question was proposed: "Whether and to what extent the sum assigned by the government for the partial restitution of the canonical offices of Chisolfi and Delia Chiesa should be divided between the endowments of those offices and the common distribution fund in this case?" The Sacred Congregation of the Council responded: "Affirmatively, in proportion to the damages suffered by both the endowments and the common fund, and furthermore." – Also, in Aquipendien, which I do not detail here, since it is very similar to the cases mentioned above.

With these observations in mind, the question arises as to how the following should be resolved (1).

[*Latin ed. p. 489*]

489. ARIANEN. Quaestiones. I. Num retentio taxae 30° a fisco, ex massa communi, intuitu praebendae Thesaurario, debeat integre a Canonico Thesaurario, vel potius pro rata, ab aliis quoque canonicis Massae participibus, in casu. Et quatenus negative. II. An et quomodo onerum reductio concedi debeat Canonico Thesaurario in casu. RESOLUTIO. Sacra Congregatio, post disceptationem sub die 17 Augusti 1895, censuit respondere: Ad I. Retentionem taxae 30°, sustinendam esse a Thesaurario pro rata quae respicit suam praebendam, ab omnibus pro rata quae respicit Massam communem. Ad II. Negative et amplius.

PARENTINA IURIS PRAESENTANDI AD BENEFICIA PAROCHIALIA. Die 17 Augusti 1895. Per summaria precum. COMPENDIUM FACTI. Episcopus dioecesis Parentinae, S. C. Concilii sub die 31 Maii 1895, retulit: exsistere in sua Dioecesi plures paroecias patronatus privatorum, alias patronatus municipalis: harum ultimarum ius praesentandi, exerceri ut plurimum, a patribus familias in comitiis, quibus praeest aliquis, auctoritatem politicam repraesentans, aliquis ab Ordinario delegatus. Iuxta consuetudinem huius Dioecesis, accedente Apostolicae Sedis consensu, quando agitur de provisione beneficii paroecialis, indici concursum, cui accedere valent sacerdotes habiles reperti, quoad scientiam, in examinibus habitis semel aut bis in anno; quorum efficacia protrahitur ad sexennium. Concursus indicti expleto termino, exquiritur votum prosynodalium examinatorum quoad alia concurrentium requisita.

[*Latin ed. p. 490*]

490. Concerning the authority of the patron regarding civil matters, it is also inquired into. After these matters have been addressed, a list of candidates is presented to the patron, along with their qualifications, and

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the patron is invited to make a selection. Finally, the candidate chosen by the majority of votes is presented by the Ordinary, for appointment. Recently, it has happened that a single candidate for a parish benefice, approved by the pro-synodal examiners, was rejected by the civil authority, and subsequently rejected by the majority of the families, perhaps due to some disturbance; and this could also lead to the situation where the private patron, or the community, rejects any candidate, even one approved by the examiners. From this, it would follow, unless proper provision is made, that the Bishop would be deprived of his right to provide for the parish; and therefore, the Ordinary inquires whether he has the right to institute a more worthy person to the benefice, in the event that the patron rejects a single candidate, or several candidates, who have been deemed suitable by the examiners. In order to properly clarify the matter, the Bishop was instructed to explain by what law lay patrons are obliged to choose from among those candidates whom the Ordinary, after prior consultation, has declared suitable; since this matter appears to be regulated only by Article 24 of the Concordat of the year 1855, with regard to parishes subject to ecclesiastical patronage. The Bishop responded, citing a letter from the Sacred Congregation, and quoting from D'Aichner's *Compendium Iuris ecclesiastici* (§ 89, Edit I, Brixinae 1874), page 320, as follows: "In the Austrian Empire, certain specific procedures must be observed regarding presentations. Whenever a benefice, whether parochial or otherwise, becomes vacant, those who wish to obtain the benefice are summoned by public edict. The petitioners, as a matter of course, send supplication letters to the Ordinary. If the benefice is subject to private patronage, the lay patron is presented by the Ordinary with a list of all candidates, excluding only those who are less worthy, from whom he may choose one." Article XXIV, the Bishop continues, of the Concordat of the year...

[*Latin ed. p. 491*]

In the year 1855, it is prescribed that all parishes, both ecclesiastical and lay, participate without distinction. However, in the case of ecclesiastical patronage, the patron, according to the same article, is granted the freedom to choose among three candidates presented by the Bishop.

A Synopsis of the Discussion. The question, therefore, solemnly judged by the Most Eminent and Reverend Fathers, is reduced to this: whether it is fitting for patrons to admit none to presentation who have been declared suitable by a competent authority, whether only one has been declared suitable, or whether several have been declared suitable, so that the same patrons, by rejecting them, do not lose the right to present, but rather retain the right to choose among others who have been approved.

To properly address this inquiry, it seems necessary, in the first place, to distinguish between the case in which only one suitable candidate is rejected, and the case in which several candidates are approved, among

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whom the patrons may choose for presentation. For it is well established in law that the right to present is equivalent to the power to choose; indeed, the privilege of presentation consists in the patron's ability to designate among several suitable candidates the one whom he deems more worthy and more pleasing to himself.

Therefore, the privilege of presentation is greatly diminished and even abolished when the power of choice among several is taken away. Consequently, the conduct of patrons who present no one would not seem to be blameworthy, if only one approved candidate is offered by the Bishop. On the other hand, patrons would be blameworthy, and would lose the right to present again, if, among several approved candidates, they presented none.

But a more careful consideration of the matter is required. For the right to present primarily contains two things: first, the grave obligation on the part of the patrons to present a suitable, indeed a more worthy, candidate among the suitable ones; and second, the right of presentation itself. The Holy Canons, in order to encourage the faithful to spend their resources for the benefit of the Churches, did not hesitate to grant to pious benefactors the right to present clerics to ecclesiastical benefices.

[*Latin ed. p. 492*]

492 BENEFICES were established with certain conditions; but abuses were always to be prevented. The Council of Trent labored greatly in this matter, and in Session 24, chapter 1, concerning reforms, it states: "All and each of those who have any right, by whatever means, to present someone for promotion... are urged and admonished, when communicating with others about such matters, to sin mortally unless they judge those presented to be more worthy and more useful to the Church." Following this principle, even particular law dictates that only suitable candidates should be chosen from among those presented by patrons. In the Austrian Empire, concordats are in force; and D'Aichner states in his work, "op. cit., page 299, edition 7, Brix," "Furthermore, Article XXIV of our Concordat prescribes that a competition must be held for all parishes, even those that are under lay patronage. Indeed, the provincial council of Vienne (q. 175) has also prescribed a form of examination, twice a year, regarding knowledge, for the administration of regular parishes." The Bishop, in his letters, reports on the method of the general examination regarding knowledge, and on the particular scrutiny regarding other qualities of those competing for a vacant benefice, in which scrutiny even the imperial magistrates, although indirectly, participate. This competition, preceding the presentation by the patron, certainly limits the freedom of choice, but it also restrains the patron in his office, preventing him from exceeding the legitimate limits, beyond which he cannot act justly. Therefore, the flow of the canonical institution must not cease, nor its exercise be hindered, even if only one suitable

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candidate is presented. For, in this hypothesis, as previously stated, it is presumed by law that no other candidate is present who is suitable, or equally suitable, for the vacant benefice. Nor is it an unusual occurrence in common law that a patron has only one suitable candidate to present, namely, the cleric. D'Aichner reports this in his work, page 295. "If the church is under ecclesiastical patronage, and the institution pertains to the Bishop, he institutes..."

[*Latin ed. p. 493*]

"The patron is he whom the examiner, having judged him more worthy among those deemed suitable, indicates as such, and who truly presents himself. But if the institution is to be made by another, then the Bishop is ordered to choose, from among the worthy, the more worthy one, so that he may be presented by the patron to whom the institution pertains." Hence, in this case and in any similar case, the right of the patron is not rendered futile and does not vanish, since it is always lawful for the patron legitimately to impugn the institution of a cleric, if it contains something contrary to law or equity, as Reinffenstuel notes in *De Iure Patronatus*, n. 68, and as Barbosa proves with numerous arguments in *Lib. 3. Iuris Eccl. Univ.*, c. 12, n. 181. But it is clear to everyone that the right of the patron should not be restricted, nor almost extinguished, except by compelling necessity, so that access to fraud is precluded to everyone. Furthermore, it is asked whether, in this case, the right to freely confer the office has already devolved upon the Bishop, as a penalty for the non-presentation, in due time, by the patron. In this regard, it should be noted that the patrons did not neglect to present [a candidate], but they rejected the presentation; and we must believe that they acted in this way with good faith, and that they justly exercised their right; for no one is presumed to be *malus* [evil]; and for the ignorant and the hindered, the useful time does not run. Thus, also, they argue concerning patrons who are ignorant or hindered, Reinffestuel, *l. c.*, n. 55, concerning patrons, 55; García*s*, *De Benef.*, part. 10, c. 2, n. 34; and the commentators generally agree. With these considerations, the question was raised as to how the doubt should be resolved.

RESOLUTION. The Sacred Congregation, having considered the matter, on August 17, 1895, decided to respond: "In this case, the Bishop should again invite the patrons to present a priest who is already deemed suitable, having previously renounced the position in the competition, and he should warn them that, if they refuse without cause, he will canonically institute the priest."

[*Latin ed. p. 494*]

In LIBURNUM, concerning the Laws of the Confraternity, on the 7th of September, 1895. Council of Trent, Session 22, chapter 9, concerning reforms. In the city of Liburnum, among other sodalities, established in

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past times by laymen, with the intention that, "being compelled to be in the world, they might have certain days in which, gathered together in spirit, they might devote themselves to God and render Him the due service," the Diocesan Synod of Liburnum held that the Congregation called "of the Holy Cosmas and Damian," founded in the year 1575, appeared to have maintained the nature of a lay confraternity. When Leopold I, King of Etruria, in the year 1785, imbued with a spirit hostile to the Church, foreshadowing worse times, issued a decree for the suppression of religious orders and confraternities, even the confraternity called "of the Holy Cosmas and Damian" was erased from the records of legal and moral entities before the civil law. But the Christian people, greatly resenting such usurpations, and with disturbances arising in the city of Liburnum concerning this matter, obtained in the year 1790 that this sodality be restored to its former state, and, by decree of ecclesiastical authority, united with another confraternity, called "of Saint Barbara," it was dedicated to the service of the Church of Saint Catherine. Subsequently, the sodality added the name of Saint Barbara to its title. In the year 1809, with the Dominican Fathers also restored to the Church of Saint Catherine, which they had abandoned due to the suppression, a decree was issued by the Queen of Etruria, that the Dominican Fathers should allow the confraternity to flourish as it now does; that is, with the right to exercise the sacred functions therein. Despite recent decrees, by which civil laws deny such sodalities any legal personality and prohibit them, the aforementioned confraternity has continued to exist until this day in the parish church of Saint Catherine, where the Dominican Fathers minister to the souls. A SUMMARY OF THE FACTS.

[*Latin ed. p. 495*]

LIBURNEN. Whether the association still exists legally, or rather, whether it has been legitimately and justly dissolved by a competent authority, is the subject of the present dispute. In truth, in these recent times, the members seem to have abandoned their own institute to such an extent that the parish priest of that church reported to the bishop: that from such an association, nothing is prepared for him except crosses and tribulations. Indeed, the association considers itself independent of the parish priest, as if it were derived from statutes, drawn up in the year 1889, without the approval of the Ordinary. Its chaplain is a secular priest, who performs functions in the parish church without dependence on the parish priest. He declared that it was entirely reprehensible, the negligence of the brothers regarding the service imposed upon them; for very few of them visit the church to perform their duties, and often young boys are called to perform the duties of the brothers in their absence, to the scandal of the faithful. Often, disturbances are caused by the very brothers themselves, and it is not uncommon to hear blasphemies uttered by impious members.

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Therefore, the parish priest asked what should be done in this case. The bishop, moved by these reports, ordered the parish priest to dissolve the association, to demand an accounting of its affairs, and to appoint three individuals to draft statutes for a new association, to be approved by the bishop. The parish priest, obeying the orders of the Ordinary, declared the association dissolved by decree. The confreres refused to accept the decree as valid, alleging the incompetence of the authority from which it emanated. Therefore, the parish priest immediately reported this to the bishop, who not only approved and confirmed the decree with his own signature and that of his chancellor, but also recalled to the members the well-known saying: "He who acts through another, acts as if he himself were acting." Nevertheless, the members, even so confirmed by the bishop, refused to accept the decree, asserting that they would always uphold the decree of the parish priest, which had already been legitimately repudiated. Therefore, the association previously appealed to the Metropolitan, who extrajudicially confirmed the decree, and subsequently to the Sacred Congregation of the Council.

[*Latin ed. p. 496*]

496 LIBURNEN. It is worthy of note that, meanwhile, the Liburnen Curia never wished to bring into doubt the force of the published decree, and therefore considered the Brotherhood to be legitimately dissolved, and never again wished to call it by that name, intending that a new Brotherhood should suffice in place of the dissolved one. Indeed, after the publication of the decree, seals were affixed to the Brotherhood's archive, so that it could not be surrendered by the members; the ecclesiastical authority had recourse to the public officials of the police, so that they would prevent, as was done, any access of the members to the archive. In contrast to all this, the Brotherhood had recourse to the Apostolic See, stating that the decree of the Ordinary should be considered null and void, as far as the dissolution of the Brotherhood is concerned, because it lacks a valid reason, and because it is based on the opinion that the same Brotherhood is exclusively parochial; whereas, on the contrary, it is a completely lay Brotherhood, which suffers no discrimination under the laws of Etruria of the year 1785. A concise discussion: It has been observed, by official decree, that the Brotherhood claims not to be ecclesiastical but lay; therefore, it is not subject to the jurisdiction of the Ordinary. However, a lengthy discussion will take place regarding the nature of this Brotherhood, whose origins are lost in the mists of antiquity, and which, in its present state, confirmed more by custom than by centuries, seems rather to be called ecclesiastical. For, at the end of the past century, restored to its former state, it was devoted to the service and worship of God in the Church of St. Catherine, under the express condition that it would assist the parish priest and the local Ordinary. This condition, even if it had not been expressly

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stated, would be understood; for it is from the end that things most clearly reveal their nature: and it would be absurd for any college to serve a certain parish church and to be engaged in divine worship, yet to be immune from ecclesiastical power. - Monacelli Formularium Leg. Append. decis. S. Bot. tom: II, D. 35.

[*Latin ed. p. 497*]

BOOK N. 497. When a sodality is subject to the correction of the Bishop, the prescription of the Bull of Clement VIII, "Quaecumque," issued to regulate confraternities, in § 5, applies: "The statutes for the governance of Regular Orders and Institutes, concerning the election and establishment of Confraternities and Congregations, and their aggregation, cannot be applied, unless they have first been examined by the diocesan Bishop and approved according to the circumstances of the place, which, nevertheless, shall always remain subject to the decrees, moderation, and correction of the same Bishop." From this, Monacellus in Form. For. Ecc. p. 2, vol. 13, form. 1, n. 49, and Ferrarius V. Confraternitas, art. 6, new additions n. 1, infer that the Bishop, by ordinary authority, can change and alter the statutes of confraternities, and can propose new laws to them when necessary; and S. C. C. in Ferrarien. 14 September 1782, § Ad VI. The same Monacellus, in Op. cit. p. 1, title V, form. n. 53, states: "Indeed, when such lay sodalities have been introduced into the Church, as embracing some pious institution, in order to fulfill the duties of religion in the bond of fraternal charity, and striving in good works to emulate better graces, if they do not fulfill this purpose, or do not intend to fulfill it, the purpose of the permission ceases, and it will no longer be a society for promoting religion, but one gathered together for the sake of profit and gain, which will no longer be tolerated... as lacking the requirements of the Bull of Clement VII. However, members may object to the decree of dissolution, if it has been issued by a parish priest who does not have external jurisdiction in the forum. This exception is based on the most thoroughly examined law, concerning whether the parish priest, as such, is the author of the Decree; or rather, whether, as a delegate, he acted with authority granted by the Bishop, sufficiently expressed in the Decree itself, at least after the Bishop's added confirmation. How, however, the force and validity of ordinary authority, in such cases, are tempered by canonical equity and prudence..."

[*Latin ed. p. 498*]

498 LIBURNEN. The Sacred Congregation of Bishops teaches in the "Balneoregion" that the admission of students must be conducted in a certain manner. On August 26, 1769, a question was proposed under number II, among others: "Whether those Brothers who have been removed from the list by the Bishop should be reinstated, and whether new Brothers elected by the Bishop should be admitted in such a case." For the Bishop

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had removed some members from the list of a certain confraternity, and admitted others, during a Visitation. In the case presented to the Sacred Congregation, the Fiscal Promotor noted: "It is expedient, according to the report made on the document, that the Fiscal Promotor, proceeding from the first question, goes on to the second, and maintains that it is permissible, not only for the Bishop, but also for any judge or magistrate, to proceed by economic means against those who are refractory and disobedient, in order to curb their audacity: Benedict XIV, Notifications, 17, § 5, Sacred Congregation, in Asculana, March 24, 1725. He adds that some of those whom the Bishop had removed from the list of members were, on the immediately following day, restored to their former status, after they had presented their excuses, and that he would do the same with others if they requested it in the same manner." In the same case, which was previously proposed on January 14, 1769, the Reverend Secretary noted on the document, with regard to this matter: "Regarding the removal of members, the Doctors teach that if those who are found to be deficient, warnings must be given beforehand, and they should not be immediately removed from the list; adding that, while a dispute is pending regarding the removal of someone, they should be maintained in their possession of their rights, and should be allowed to vote, and to perform all other things that are proper for Brothers." See Posthius, Resolutions, civil, 42, per total, Cardinal de Luca, On Eminence, discourse 38, n. 7 and following; Bassus, On Sodalities, in Miscellanea, n. 10. After considering all of these things, the Most Eminent and Reverend Fathers responded to the proposed question: "To the second, affirmatively in all respects." Nevertheless, the Most Eminent and Reverend Fathers did not wish to deny the Bishops the power to remove some from the number of Brothers, but only to suggest a method of canonical equity with regard to the manner of execution: for in the aforementioned Asculana, March 24, 1725, in the fourth question, it was asked: "Whether it is permissible..."

[*Latin ed. p. 499*]

LIBURNEN. 499 To the Most Reverend Bishop, it was deemed advisable to respond "Affirmative" to the question concerning the removal of officials and ministers, or confreres elected, who are not suitable and who present serious objections. Therefore, it is permissible to conclude that there are many and effective means by which Bishops can be diligent in governing confraternities; whether statutes are corrected, or entirely changed, or whether some members are removed, or whether the confraternity itself is entirely dissolved, with appropriate and legitimate warnings, as the circumstances require. With these premises established, the purpose was to explain the doubt concerning whether and how a decree of dissolution can be sustained in the case of a confraternity. RESOLUTION OF THE CONFRATERNITY. The Sacred Congregation

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for Religious Affairs, after deliberation on September 7, 1895, decided to respond: "Affirmative" in all cases. "-s-t-o-fg— FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS. A doubt regarding the dependence of Religious communities on the Ordinary of the diocese in which they reside. Most Blessed Father, Father Joseph, Bishop of Canada, humbly prostrates himself before Your Holiness, and states: "I do not clearly see the relationships that should exist between the Ordinary and the Sisters, of whose Institution there are no men who govern them, even though the Institution has been approved by the Church; especially concerning those who are not governed either by men of their own Institution, because such men are entirely lacking, nor has their Institution yet been approved by the Church. It seems certain that such Sisters, being exempt from the power of dominion, which arises from the vow of obedience, do not enjoy such an exemption with respect to..."

[*Latin ed. p. 500*]

500 G AN ARIEN. to the Ordinary, within whose diocese they reside, concerning the exercise of jurisdiction and external administration. Now, in practice, the Sisters, of whom we are speaking, experience this: their Superiors General transfer them from one house to another in a different diocese, and establish subordinate Superiors, absolving others from office, without informing or consulting the Ordinaries in any way about these absolutions, appointments, or transfers; indeed, they do not even inform them or make them aware of such matters. This has occurred in my diocese with regard to the Sisters known as "the helpers of the elderly," and also those called "servants of Christ." These latter are particularly troubled, because, since their institute has not yet been approved by the Church, they have no canonical foundation and no rational basis for their regular existence, except for those things that derive from the authority of the Ordinary. Having explained these matters, I humbly beseech Your Holiness to deign to resolve the following doubt: Whether the Superiors General, of whom mention is made in the preceding explanation, even those whose institute still awaits the approval of the Holy See, are obliged, whenever they wish to transfer a Sister from one house to another in a different diocese, or to appoint a subordinate Superior, or to absolve someone from office, to consult with the Ordinaries in whose dioceses these houses are located, to obtain their confirmation, at least their consent, or to make them aware of the matter? And God, etc. The Sacred Congregation of Eminent and Reverend Cardinals, entrusted with the affairs and consultations of Bishops and Regular Canons, having considered the aforementioned doubt, decided to respond as follows: The Superiors General, in the cases mentioned, may exercise their rightful authority; and it suffices that the same Superiors, merely for the sake of convenience, inform the local Bishop of

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these arrangements. Rome, April 9, 1895. I. Card. VERGA, Prefect.

[*Latin ed. p. 501*]

501 FROM DECREE 8 OF THE CONGREGATION FOR INDULGENCES, concerning Indulgences attached to the Prayer to the Virgin Mary, for the return of dissenting Churches to the unity of the faith. In Brno, the Father, the President of the Catholic Circle under the title of the Immaculate Conception, existing in Rome, and head of the section dedicated to Continuous Prayer, humbly prostrates himself before the Holy Feet, and implores from Your Holiness the grace of some Indulgence for the recitation of the prayer annexed below, dictated by His Eminence, the Most Reverend Vicar of Rome, in order to obtain from God, through the intercession of the Most Holy Virgin, the return of the dissenting Churches to the unity of the faith, so greatly desired and promoted by Your Holiness.

PRAYER TO THE MOST HOLY MARY for the return of the dissenting Churches to the unity of the faith.

O Virgin Immaculate, You who, through a singular privilege of grace, were preserved from original sin, look with mercy upon our dissenting brothers, who are nonetheless Your children, and call them back to the center of unity. Even far from us, they have reserved for You, Mother, the most tender devotion; You, being so generous, reward them, obtaining for them conversion. Victorious over the infernal serpent, from the very beginning of Your existence, renew now, as the necessity is pressing, Your ancient triumphs. If our unhappy brothers lie divided from the one Father, it is the work of the enemy. Therefore, expose his snares, scatter his legions, so that they may finally see that it is impossible to attain salvation outside of union with the Successor of Saint Peter. You who, in the fullness of gifts, from the beginning glorified the power of Him who worked such great wonders in You, glorify Your Son, in His one fold, under the guidance of the universal Pastor who sustains His flock on earth, bringing back the lost sheep, and may Your glory be, O Virgin, as that of having exterminated from the world all errors, and as that of having extinguished schisms and restored peace to the entire world.

[*Latin ed. p. 502*]

502 FROM THE DECREE OF THE HOLY CONGREGATION OF INDULGENCES, heard by the Most Holy Fathers on February 1, 1896. The Most Holy Pope Leo XIII, with paternal benevolence, grants to all the Christian faithful, of both sexes, who, with at least a contrite heart and with devotion, shall have recited the aforementioned prayer, an Indulgence of several days, to be gained once a day. This concession is valid forever, without any brief being required, notwithstanding all contrary provisions. Given at Rome, from the Secretariat of the Holy Congregation for Indulgences and Sacred

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Relics, on February 21, 1896. ANDREAS CARDINAL STEINHUBER, Prefect. L. £8 S. ffr ALEXANDER, ARCHBISHOP OF NICOPOLIS, Secretary. Concerning the renewed consent of those to whom it pertains, in the case where the Stations of the Way of the Cross are renewed. January 11, 1896. The Reverend Father Francis, Brother Raphael of Aureliano, Procurator General of the Order of Friars Minor, humbly presents the following to the Holy Congregation: Concerning the legitimate erection of the Stations of the Way of the Cross, the Holy See has wisely established several things to be observed, under penalty of nullity. For it has decreed "that in erecting such Stations, both the deputation and the consent of the priest erecting them, and of the local Superior, as well as the consent and license of the respective Ordinary or Bishop, and of the parish priest, and of the Superior of the Church, Monastery, Hospital, and of the pious place where such erection is to take place, must be given in writing, and not otherwise, and must be presented whenever it is required, under penalty of the nullity of the erection itself, which penalty is incurred by such action." Now, the Orator requests from the Holy Congregation a solution to the following doubt: Whether, in the case where the Stations of the Way of the Cross must be renewed, in the same Church or Oratory, in which they were duly erected, with all the documents, as prescribed above by the Holy See, the aforementioned...

[*Latin ed. p. 503*]

From the INDEX of INDULGENCES 505, all and each documents must be requested anew, either orally or in writing; or is it sufficient merely that the blessing of the new stations be conferred by a priest legitimately appointed for that purpose? The Holy Congregation for Indulgences and Sacred Relics, having considered the doubt, responded on January 11, 1896: Provided that it can be presumed that the consent of those to whom it pertains will endure, negatively regarding the first part, and regarding the second, it suffices merely to bestow the blessing of the new stations. Given in Rome from the Secretariat of the aforementioned Holy Congregation, on the day and year as above.

[Signature] ANDREAS CARD. STEINHUBER, Prefect.

[Signature] L. © S. •B ALEXANDER, Archbishop of Nicopolis, Secretary.

FROM THE HOLY CONGREGATION FOR RITES, ALMERIA. A doubt regarding the carrying of the Image of the Blessed Virgin Mary in processions with the Most Holy Sacrament. In the town commonly called Gergal, in the Diocese of Almeria, in Spain, it is customary that on the second Sunday of September, in the evening hours, a religious procession takes place, in which the Images or Relics of the Blessed Virgin, of Saint Joseph, and of other Saints are carried, together with the Most August Sacrament of the Eucharist. Hence, the parish priest of that town, doubting whether such

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a practice is entirely in conformity with the rubrics and decrees, humbly requested a solution to the following doubt from the Holy Congregation for Rites: Whether, outside of the feast of the Body of Christ and its octave, it is permissible, in honor of the Blessed Virgin Mary or of the Saints, to carry the Most Holy Sacrament in evening processions, and also the Images or Relics of the Blessed Virgin and of the Saints? Furthermore, the Holy Congregation for Rites, having considered the report of the undersigned Secretary, and having heard the opinion of the Liturgical Commission, after mature deliberation, decided that it should be replied:

[*Latin ed. p. 504*]

504. From the Sacred Congregation of Rites, Regarding a Doubt: Affirmative concerning the consent of the Ordinary regarding the first part; Negative concerning the second part. And thus it is to be observed. January 31, 1896. CAI. CARD. ALOISI-MASELLA, S.R.C., Prefect. L. * S. ALOISIUS TRIPEPI, S.R.C., Secretary.

ANNECY. Regarding the use of the Holy Oils, of the preceding year, in the blessing performed by the Most Reverend Bishop of Annecy; so that, in all the parishes of his diocese, the use of the sacred oils, blessed in the preceding year, may be permitted until the Saturday before Pentecost, inclusive, lest at that time the pastors or vicars be absent from their own parishes, whose ministry the faithful require: The Sacred Congregation, after considering the matter with the undersigned Secretary, and in accordance with the opinion of the Liturgical Commission, decided to reply as follows: The pastor should see to it that a priest, or cleric, if it is possible, receives new sacred oils. If, however, any impediment still exists, the same pastor, either personally or through another priest, should bless the font, without the addition of the sacred oils, which may be added privately at an opportune time; unless he must baptize someone, in which case he should add the aforementioned oils during the solemn blessing. And thus it is to be observed. January 31, 1896. C. CARD. ALOISI-MASELLA, S.R.C., Prefect. L. * S. ALOISIUS TRIPEPI, Secretary.

BISARCHIEN. Regarding the singing of prayers or hymns in the vernacular language during the Mass. The pastor of the parish church of the place commonly called Ozieri, within the boundaries of the diocese of Bisarchien, in Sardinia, with the consent of his Most Reverend Bishop, humbly requested a solution to the following doubt from the Sacred Congregation of Rites:

[*Latin ed. p. 505*]

FROM THE SACRED CONGREGATION OF RITES 505: Whether, in the same parish church, the faithful may, according to the ancient custom, interrupted for some years, sing in the vernacular language, prayers or hymns composed in honor of a Saint or Mystery, whose feast is being cel-

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ebrated, during the Mass. Furthermore, the Sacred Congregation of Rites, upon the recommendation of the undersigned Secretary, and after careful consideration by the Liturgical Commission, decided to respond as follows: Affirmative, with the consent of the Ordinary, regarding a private Mass; Negative, regarding a solemn or sung Mass, according to Article seventh and eighth of the Instruction on Sacred Music, notwithstanding the Decree of June 21, 1879, and any other decrees. And it is thus ordered. January 31, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. L. * S. ALOISIUS TRIPEPI, Secretary. GENERAL DECREE Concerning the Anniversary of the Dedication of a Church. To completely eliminate all future controversies regarding the Anniversary of the Dedication of a Church, the Sacred Congregation, in a meeting held at Vatican, for the purpose of publishing a new authentic collection of Decrees, decided and declared: I. The Dedication of a Church, and therefore its Anniversary, is a feast of the Lord. II. Hence, the Anniversary of the Church itself, according to the rubrics, and in the primary order, should be preferred to all other local feasts, even those of the Patron and Titular Saints, both in precedence and in observance; nevertheless, it is permitted that the feast of the Patron, whatever his personal dignity may be, be preferred to the aforementioned Anniversary, due to the reason of the holiday. III. However, the Anniversary of the Dedication of a Church is not properly to be considered a secondary feast, even if it coincides or occurs with other feasts, the rubrics and the General Decree concerning primary and secondary feasts must be observed. IV. Furthermore, when the Anniversary of the Dedication of a Church, whether its own or not, coincides or occurs with more solemn feasts of the universal Church, these should always take precedence over it, even setting aside personal dignity, according to the rubrics. V. Although that day must be fixed.

[*Latin ed. p. 506*]

506 Concerning the anniversary of the dedication of a church, which occurs within a year of its consecration: nevertheless, the Bishop who consecrated the church retains the right, according to previously issued decrees, to fix another day, or even a Sunday, provided that he chooses a day each year for a more solemn celebration of that anniversary; except for the two highest classes of churches universally, as well as for any privileged Sundays, and for the two highest classes of particular churches. And thus it was ordered. On February 4, 1896. [Signed] CARD. ALOISI MASELLA, S. R. C. Prefect. * S. ALOISIUS TRIPEPI, S. R. C. Secretary.

DOUBTS regarding days within the octave of a major or minor feast. Certain masters of the Sacred Ceremonies, to whom the task of preparing particular calendars has been entrusted, humbly requested the Sacred Ritual Congregation to resolve the following doubts:

I. Do days within the octave of a major or minor feast yield to any occur-

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ring semi-double?

II. Does a day follow the rank of its major or minor feast?

And the Sacred Congregation, after considering the matter with the undersigned Secretary, and after hearing the opinion of the Liturgical Commission, having duly deliberated, decided to respond as follows:

I. Days within any octave are to be considered secondary, and yield to any occurring semi-double.

II. Affirmative, namely: A day is major or minor, according to the rank of the feast to which it pertains.

And thus it was responded. On February 21, 1896. [Signed] L. * CARD. ALOISI - MASELLA, Prefect. S. A. TRIPEPI, Secretary.

[*Latin ed. p. 507*]

FROM THE SACRED RITUALS, 507, VIGEVANO. Various doubts. The Reverend Joseph Precerutti, of the Vigevano Diocese, to whom the task is entrusted of compiling the diocesan calendar each year, at the request of the Most Reverend Ordinary, has earnestly requested a solution from the Congregation of Sacred Rites regarding the following doubts:

I. In the Vigevano Diocesan Calendar, it frequently occurs that two primary feasts, or two secondary feasts, of the same rite and class, but of different dignity, fall on the same day, one being mobile and the other fixed to a day of the month; the question is, to which feast should precedence be given in these cases?

II. What is to be done concerning the feast of the Dedication of the Basilicas of the Holy Apostles Peter and Paul, which is perpetually impeded in the Diocesan Calendar, since there is no place for it?

III. In the Vigevano Diocese, and in other Piedmontese Dioceses, the feast of the Translation of the Relics of Saint Mauritius the Martyr, the Principal Patron of Piedmont, is celebrated on January fifteenth, under a double rite of the first class with an Octave; whereas, on September twenty-second, the feast of Saint Mauritius and his companions is celebrated, under a greater double rite. The question is, whether this latter feast should be considered a primary feast in this case?

IV. In parish churches which have no choir, and in which yet the Vespers are sung on feast days without the Compline, should these Vespers, on the feast of the Purification of the Blessed Virgin Mary, be concluded with the antiphon: "Alma Redemptoris Mater," or with another: "Ave, Regina Coelorum?"

V. Can the memorable custom be maintained, whereby, in the Offices for the Dead, which are performed within the year with some solemnity, especially on the days of death and anniversaries, the First Nocturn is always sung with the recited praises, without omitting the singing of the Invitatory: "Venite, exultemus"?

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The Sacred Riturgical Congregation, after considering the report of the undersigned Secretary, the opinion of the distinguished Liturgical Commission, and after mature deliberation, decided that the following answers should be given:

To I. Of two feasts, primary or secondary, of the same rite and class, precedence belongs to the feast of greater dignity; in the case of equal dignity, precedence belongs to the feast fixed to a day of the month.

To II. The feast in question, according to the common law, would ordinarily be reduced to a simple feast; however, due to a special grace...

[*Latin ed. p. 508*]

508 Regarding the observance of the Feast of the Holy Rosary, it shall be restored to its original form, free from the two lesser offices, and the semi-double feast shall become a simple feast. To item III: Affirmative. To item IV: Affirmative regarding the first part; Negative regarding the second. To item V: The rubrics of the Rituale and the Roman Breviary shall be observed. And thus it was decreed and ordered to be observed on February 21, 1896. C. CARDINAL ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. L. * CARDINAL ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

In NEAPOLITANA, concerning the Beatification and Canonization of the Servant of God, Sister Mary Juliana of the Most Holy Sacrament, of the Third Order of the Most Blessed Virgin, of the Seven Sorrows, and Abbess of the Monastery of Mantua of Saint Augustine. The writings attributed to or concerning the aforementioned Servant of God, Mary Juliana of the Most Holy Sacrament, which were presented to the Sacred Congregation of Rites after duly conducted investigations, so that a review and examination thereof might be instituted for the advancement of the Decrees, are described in the following list (Follows a list of writings).

Therefore, the Most Eminent and Reverend Cardinal Camillus Mazzella, Promoter of the Cause, reported at the meetings of the Ordinary members of the Sacred Congregation of Rites, held on the designated day at Vatican, that in the aforementioned writings, he found nothing that could impede the progress of this Cause. After hearing the Reverend Father, Augustine Caprara, Promoter of the Holy Faith, the Most Eminent and Reverend Fathers, entrusted with the observance of the Rites, judged it fitting to respond: "Nothing stands in the way of proceeding further, reserving, however, the faculty for the Promoter of the Faith to object, if and to the extent that it is legally permissible." On June 4, 1895.

These matters, having been reported by me, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, to His Holiness, Pope Leo XIII, His Holiness approved and confirmed the Decree of the Sacred Congregation of Rites on the 10th of the same month and year.

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C. CARDINAL ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. * CARDINAL ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 509*]

509 FROM THE SACRED CONGREGATION FOR THE CULT: Concerning the precedence granted to members of the Third Order. In the town of Fosano, the right of precedence is granted to members of the Third Order of St. Francis. At the request of the Prior of the canonically established Third Order of St. Dominic in the town of Fosano, in the diocese of Monopolitana, the Sacred Congregation for the Cult, in its Ordinary Royal Assemblies, held on the date indicated at the Vatican, before the undersigned Cardinal, Prefect of the same Sacred Congregation, considered the following question: Whether the right of precedence belongs to members of the Third Order of St. Dominic, or to members of the Third Order of St. Francis, in this case, and in the aforementioned town? It was decided to respond as follows: Having considered the constitutions of Gregory XIII and Urban VIII, as well as the Decree of the Sacred Congregation of Bishops and Regular Canons of September 4, 1733: Negatively to the first part, affirmatively to the second part. And it was so written. February 6, 1896. [Signed] CARD. ALOISIUS MASELLA, Prefect of the Sacred Congregation for the Cult. [Signed] L. S. ALOISIUS TRIPEPI, Secretary. FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: Letters concerning the obligation to take an oath by Missionaries. June 21, 1895. To the Most Reverend and Venerable Lord: Concerning certain matters, and in some missions, regarding the interpretation and force of the Bulls *Eas quo* and all the concerns that Pope Benedict XIV of blessed memory addressed concerning the oath to be taken by Missionaries to the Chinese and Indian peoples, the following question has arisen: Whether, in addition to European priests, indigenous priests are also required to take this oath. The Sacred Congregation for the Propagation of the Faith, to which this doubt was presented, considered it appropriate to refer the entire matter to the Sacred Office. After necessary and opportune investigations into the matter, in the general assemblies held on Thursday, May 29th of the current year, the aforementioned Congregation...

[*Latin ed. p. 510*]

510 From the Most Holy and Reverend Fathers of the Congregation for the Propagation of the Faith, the following response was given regarding the reported doubt, and subsequently confirmed by the Most Holy Pope Leo XIII, namely: According to newly obtained information, it is to be held. This judgment, to which all priests of any mission, whether European or indigenous, must faithfully adhere, and while I communicate this to Your

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Eminence, I also take this opportunity to inform you that the oath, of which I spoke above, once taken before any prelate of a mission, will always remain in full force; therefore, it is not necessary to renew it, if the missionary transfers to another mission and becomes subject to another superior; however, he must present evidence of the oath already taken. In the meantime, I pray to God to preserve you for a long time. Given in Rome, from the offices of the Propagation of the Faith, on the 21st of June, 1895. Your Eminence's most devoted servant, M. CARD. M. LEDOCHOWSKI, Prefect. L & S. A. ARCHIEP. LARISSEN, Secretary. Regarding this type of oath, it should be noted: I. By the decree mentioned above, all missionaries, both European and indigenous, are subject to taking the oath. II. According to the response of the Holy Roman Congregation and the Universal Inquisition to the Apostolic Vicar of Tunquin Orientalis, Rome, Reverend Father Joseph Terres, Order of the Preachers, dated July 19, 1889, European priests, who serve as chaplains in the French army, are not subject to the oath while exercising their duties as military chaplains; however, they are subject to the oath when they perform any missionary duties. III. According to the decree mentioned above, missionaries who have once taken the oath are not required to repeat the oath when they transfer from one mission to another; however, they are required to present evidence of the oath already taken. This doctrine, given by Benedict XIV for those missionaries who had taken the oath in Europe with the permission of the Holy See, was extended by the Holy Congregation of Propaganda by decree of February 11, 1747, to missionaries transferring from one mission to another.

[*Latin ed. p. 511*]

FROM the Sacred Congregation for the Propagation of the Faith, by decrees of the Sacred Congregation for the Propagation of the Faith of September 21, 1821, and March 8, 1823: and today, with this present decree, they are again renewed and confirmed, and all sentences issued by the Sacred Congregation for the Propagation of the Faith which appeared to act in the contrary are revoked.

IV. The censures contained in the aforementioned Constitutions of Benedict XIV, against those who violate them, no longer hold force today, as is evident from the following response. In the Sacred Congregation of the Holy Office, on Thursday, the 5th day of the month, the following question was proposed by Your Eminence: Whether, after the Apostolic Bull... the censures prescribed in the two Constitutions of blessed memory of Benedict XIV concerning the rites of the Sinenses and the Malabar, are still in force.

Furthermore, the Most Eminent Fathers, after careful consideration, responded: The Constitutions of Benedict XIV of blessed memory, concerning the aforementioned rites of the Sinenses and the Malabar, published in the years 1742 and 1744, are entirely in force, except only for the censures

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of established sentence, of which no mention is made in the Constitution of the Most Holy Pope Pius IX, published on the 14th of October, which begins with the words "Apostolicae Sedis moderationi"; and therefore, at the end of the formula of oath, which is prescribed and confirmed by Benedict XIV in the same Constitution, among the words, "I acknowledge and declare myself subject to the penalties imposed by the aforementioned Constitutions," the following should be added after the word "imposed": "and which are still in force."

It was ordered that this be communicated to Your Eminence. Letter from the Sacred Congregation for the Propagation of the Faith to the Superior Seminary of Paris, dated March 3, 1873.

[*Latin ed. p. 512*]

512 FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, THE INQUISITION. Modifications to the Apostolic Letters concerning the granting of matrimonial dispensations. In the Apostolic Letters, by which matrimonial dispensations are granted from the Apostolic Registry: I. The following clauses are omitted from now on: a) If he humbly requests your permission; b) After first receiving from him an oath that, not in the hope of more easily obtaining such a dispensation, he has committed incest or adultery of this kind, and that he will never commit such things in the future, nor will he offer help or favor to those who do; c) After he has made the two aforementioned sacramental confessions. II. In the same letters, the following words are removed: "We wish that if you should presume to demand or receive any gift or reward, the absolution or dispensation shall be of no validity or force whatsoever"; and it is declared absolutely forbidden to presume to demand or receive any gift or reward. III. The clause: "Provided that he remains in the aforementioned separation," is removed, and in its place it is said: "Having removed, as far as possible, any scandal, especially through separation, at a time convenient to you, if it can be done." IV. The clause: "If you find that the prayers are made in truth," is replaced with this clause: "If the facts stated are true." V. Where it is said: "You shall absolve, either through yourself or through another, in the usual form of the Church," it is said instead: "In this case only, you shall absolve, either through yourself or through another." August 28, 1895. R. Card. MONACO.

[*Latin ed. p. 513*]

513 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BURDIGALUM, OR PETROCORICENSE. CONCERNING THE NULLITY OF MARRIAGE. Dated July 24, 1894, February 23, and December 14, 1895. Session 24, Chapter 5, Concerning Impediments to Marriage. "COMPENDIUM OF THE CASE. Before the Parish Priest of the town of Lamothe-Montravel, in the diocese of PetrocorICENSE, a legitimate

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marriage was contracted on March 19, 1877, between Catherine Aloysia, Joanna, who had barely reached the age of 18, and Anthony, aged 25. The celebration of the marriage was accompanied by certain circumstances, namely, that the bride appeared to be 'very distressed,' as reported by the groom. The bride, in this case, arguing for the nullity of the marriage under the head of fear, contends that she was orphaned at the age of twelve and came under the guardianship of her mother, who possessed a 'tenacious will.' This mother, having not managed the guardianship well, desired to compare her reluctant daughter with a husband of 'lenient character and disposition,' in order that she might approve of the actions of the guardian mother, and that the girl, not resisting, would not abhor the marriage. It is also reported that Catherine disliked Anthony not only because of his 'undecorous appearance,' but especially because she had intended to marry another. The conjugal union appeared to have lasted peacefully for four years, during which time they had a child; afterwards, however, quarrels, disagreements, and suspicions arose on the part of the husband regarding the fidelity of his wife; hence, a so-called civil divorce was pronounced in the year 1888 on July 20. The bride, through a written petition presented to the Curia of Burdigalum on April 15, 1891, requested that a trial concerning the nullity of the marriage be initiated, and on June 14, 1893, a judgment was issued by this Diocesan tribunal denying that the marriage was null. The plaintiff immediately appealed to the Holy Congregation. Records, Volume XXVIII, page CCCXXXIII. 33.

[*Latin ed. p. 514*]

514 BURDIGALEN. OR PETROCORICEN. The advocate, who is entirely devoted to dispelling fears through weighty arguments, first explains the reasons for the necessity in which the mother found herself, namely, to conceal her bad administration of the estate of Tulle. However, the daughter still resisted, and, as the advocate continues, she earnestly requested that the celebration of the marriage be postponed until Anthony had attained a certain social standing. For she hoped to find an opportunity to avoid the marriage altogether. But the mother, fearing that the delay might prejudice her plans, avoided coercion and threats; and, through continuous and importunate prayers and exhortations, as well as threats, she forced the daughter to consent to the marriage. And indeed, the marriage was celebrated on March 19, 1887. The mother, in truth, was the one who exerted the coercion.

DEFENSE OF THE WOMAN. With these facts established, the advocate leads a group of doctors, striving with all his might to harmonize their opinions in order to establish the nullity of the marriage in this case. To the point, he cites Cosin, *De separatione*, Book 1, chapter 8, paragraph 3. – *Ibid.* – "To invalidate a marriage, it is sufficient that there be a lesser degree of fear than in other contracts, because of the greatest freedom of will that

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is required therein"; and Sánchez, *De matrimonio*, Book 4, discussion 8, number 7, and the conclusion: "Among these opinions, I consider the second to be the most probable. For, on the one hand, any importunity, to say nothing of vexation and oppression, greatly influences and overwhelms, as all the texts cited for Opinion 4 demonstrate; and, on the other hand, the due reverence owed to the person making the request can render one timid and fearful, and unwilling to contradict the one who is asking, so that both fears, namely, prayers and reverence, rightly and justly joined together, compel a prudent and steadfast response, and will extract consent from oneself." And Pirhing, Book 4, title 1, section 4, number 119: "Importunate and repeatedly made requests, although not alone, when joined with the fear of reverence for the person making the request, and the insistence of the one making the request, cause a fear to arise in a steadfast person."

[*Latin ed. p. 515*]

BORDEAUX (or PETROCORUM). 515 Therefore, these are sufficient to invalidate the marriage, because it is most difficult to always reject long and continuous entreaties from a superior, which, without the danger of a very grave offense, can scarcely be done; and the Sacred Roman Rota, before Emerix, December 8, 780, number 7 – there – "persuasion and entreaties are considered in place of compulsion and coercion, and they instill fear in a man who is about to remain steadfast, especially when they have been used by the father and other superiors." Relying on these authorities, the Advocate, thoroughly examining the circumstances of the case, notes that the Court of Bordeaux has ruled that coercion of the bride does not invalidate the marriage, since the mother herself admits to the coercion. This coercion, when exercised up to the very last moment on the girl, who is under the authority of her mother; "up to the last moment," says the mother, "I was asking myself if my daughter would give her consent." The Advocate notes that, according to Barbosa, volume 1, number 204: "When it is proven that fear intervened shortly before the marriage, and that Lewis was always under the power of the one who instilled the fear, up to and including the celebration of the marriage itself, it is presumed to have been done, even during that same fear, even if in the very act of the marriage she showed a cheerful countenance, because the preceding fear is not thereby purged." To prevent the exception of suspicion against consanguineous witnesses, the Advocate cites the decision of the Sacred Roman Rota, 225, § 1, concerning Emerix: "It is less effective, because brothers and sisters, by stating that they themselves did not instill fear, allege their own impropriety; moreover, since their testimony is corroborated by a third witness, and other conjectures, it does not therefore prove less for Peter, who could not produce better witnesses to prove the fear, than those who instilled that fear, and who testify about their own facts, as in similar cases, where the one who instilled fear in the son is required to testify; and the text in chapter

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2, question 3, is noted by Barbosa." In this case, however, the Advocate continues, there are several witnesses who testify about the violence and the reverential fear, and about the entreaties and...

[*Latin ed. p. 516*]

516 BORDEAUX (or PETROCORI). They deposit, with one voice, accounts of importunate and continuous persuasions. Therefore, the testimonies of the parents, who admit to coercion, fully confirm that coercion cannot be called a simple deliberation and a legitimate right of the mother, as the defender from Bordeaux contends, but rather a true violence, which renders no marriage valid. The Orator continues: The groom himself confirms that serious discussions took place before the marriage between the mother and the daughter. It should be noted, the Advocate points out, that this is not a case of a man who suffers violence, but of a timid girl, who had never left the house, and who, under the authority of an imperious mother, and always subject to a firm purpose, remained constantly under her influence. The ecclesiastical Tribunal of Bordeaux, with sound judgment, questioned witnesses regarding the character of the mother and the daughter. What, then, do they testify? All testify to the mother's authority, and all testify to the timid nature of Joan Catherine. Therefore, given the character, the fear instilled, and the fear experienced, and since we are dealing with a girl of a young age, there is no doubt that true fear was present, which, the orator notes, is said to overcome even a steadfast man. Finally, he adds that, in this case, the parents who instilled the fear had the greatest interest in the marriage taking place, in which case, the fear of reverence alone is sufficient to annul the contract. Barbosa, *Notiones decisionum*, book 6, note 16, number 30: "It is undoubtedly the case that where the one who instills fear has an interest in the marriage taking place, only the fear of reverence is said to be sufficient to annul the contract." But, if these things were not sufficient, the Advocate continues, the fear and coercion are clearly demonstrated by what followed the marriage. For it is evident from the testimonies that Joan Catherine, who had consented to the marriage under duress, had directed her affections elsewhere and had sometimes experienced movements of the heart contrary to the marriage. But these aberrations of Catherine occurred after the marriage.

[*Latin ed. p. 517*]

BORDEAUX (or PETRUGORGEN). In the year 517, she demonstrated her aversion to the man more and more clearly. Later, the advocate, in order to refute the objections, because the votes of the council of Bordeaux were unfavorable to her cause, calls upon the theologian Belleveau to express his opposition. Another theologian, the advocate notes, uses arguments that even sound criticism cannot refute. First of all, he denies that a reverential fear is sufficient to establish the nullity of the marriage, but

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he maintains that a qualified reverential fear is absolutely necessary. It is worthy of note, the advocate says, the method of argumentation used by this eminent theologian. He readily admits the imperious nature of the mother, and also her own interest in the marriage. Therefore, the imperious mother compelled her daughter to act in her interest. But, contradicting all the witnesses, he adds gratuitously: "We believe that the daughter, although younger, showed signs of a firm will." To this, the advocate replies: "Distinguish times, and reconcile the laws." Catherine, a girl of 17 years of age, placed under the authority of her mother, the mother, I say, who was responding to the future son-in-law, said: "This marriage will be done because she wants it"; she could not resist such authority. Inexperienced in life, and as all the witnesses testify, sweet and timid, she was entirely subject to her mother, so that, even though she was reluctant, she was forced by her mother and brother to receive the bridegroom in the bridal chamber, on the first night of the marriage. But after such violence and coercion, Catherine, now a woman, having regained her free will, endeavored with all her might to shake off the yoke that had been unjustly imposed upon her, and she exercised her will. Finally, the advocate, examining the judgment of the council of Bordeaux, whose annulment he requests, observes that it is based on false assumptions. But he proceeds with the appeal and says: "From the very first days, the marriage was consummated, and for two years, until the birth of the child, the spouses lived in peace." To this assertion, the advocate responds with a general principle that he cites from...

[*Latin ed. p. 518*]

518 BORDEAUX (or PETROCORICENSE). From the Normandy region, concerning the nullity of marriage, dated September 30, 1718, namely: "A marriage contracted under fear, even after the fear has been removed through cohabitation with carnal intercourse and other acts, is not to be validated, unless it is contracted again, using the same form as that of the Council." And noting that, in any case, Catherine could not have validly re-affirmed her consent to the marriage, since, as it was null, she did not know it. OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. But, on the contrary, the advocate for the marriage begins his argument from the testimonies of the husband, stating: "At first, we lived in peace; but when a son was born, I began to reproach her, because she was too lenient in her dealings with young men. After four years, I had to warn my wife about her excessive familiarity with a certain young man. Sometimes a son was born, whom I believed to be the son of adultery. However, in order to avoid the stain of scandal, the husband refrained from accusing his wife of adultery, and instead alleged that he had received an injurious letter from her, sent to obtain the compensation he sought." After four years from the decree of divorce, and fifteen from the celebration of the marriage, Joanna began to challenge the validity

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of her marriage with Anthony; and, in fact, at the beginning of the year 1892, she sent a petition to the Most Reverend Lord, in which she asserted the nullity of the same marriage and requested that it be declared null due to a lack of free consent, or due to the fear instilled in her by her mother. However, as the Advocate notes, the Bordeaux court, which took cognizance of the case, treated Joanna most generously, rather excusing her witnesses superficially, and even instructing her before questioning her, and questioning her afterward; nevertheless, when the matter was brought before the court in Malix, the weakest foundation of the petition was recognized, and a judgment was pronounced against the plaintiff, in accordance with the best of justice. For the very things that are alleged by the plaintiff are such that they rather exclude than demonstrate the asserted reverential fear, which accompanied the lack of free consent. Then, the advocate for the Sacrament, recalling the opinions of the more serious Doctors concerning reverential fear, requires that...

[*Latin ed. p. 519*]

BURDIGALA. OR PETROCORICENSE. 519. Although every fear is noted, but that one is clearly a grave fear because of the imminent danger of a greater damage, it is observed that nothing similar to these principles of law is found in this case. But it is most noteworthy that the true cause of the divorce was not anything other than the adultery of the actress herself; and that the injurious letters were devised with the counsel of lawyers, in order to avoid the infamy of adultery, and were written and sent to the husband. As for the fever, which the aforementioned actress insinuates as an argument of resistance from the beginning of conjugal life against the husband, so that she might subsequently deny the prior free consent in the marriage, even though no one, of all those heard in court, confirms this, from the subsequent words of the doctor related by her, "your husband will be very satisfied and will eat the fortune of your child," it is manifest that the asserted illness does not have the ingenious meaning attributed to it: for that child was not born until two and a half years after the beginning of conjugal life. Indeed, another cause of the aforementioned fever can be deduced from the testimony of the husband, who stated that the early years of the marriage were tranquil; which were only disturbed when the birth of the first child was imminent, due to the wife's excessive affection for a young man. But the Advocate, saying that he does not inquire who heard these things, to whom the woman revealed, at a time when she was not suspected, what she did or said, whether she made any protestation, or sought the counsel or help of anyone, - he only asks what benefit these words, presented by the mother and the fiancé, could be of, how they could cohere with each other, and how they could be considered credible: so that not only the mother, but also the fiancé, instilled fear in the actress in order to extort consent to the marriage. The husband, indeed, did not even

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dream of anything similar, it will be manifestly apparent; as for the mother, the explanation, which is presented in the aforementioned pleading, is this: the mother, as guardian of two children, namely the actress and Peter, had mismanaged the administration of their assets, and had favored one more than the other: therefore, the marriage was pleasing to the heart of that mother.

[*Latin ed. p. 520*]

520 BURDIGALENSIS. OR PETROCORICENSE. Quia "Antonius sine ulla contentione approbaret rationes quae emolumenta filio suo tribuerunt..." Urgetur, quod sponsa Ioanna, a Iudice de coniugalibus relationibus interrogata, responderit: "Prima nocte matrimonii volui me in cubiculum meum retrahere et Antonium non accipere. Mater mea contra me irruit, dicens quod esset scandalum, et quod iam satis locutus esset. Tunc cederam." Nihil, sed verum est, hoc obstat, cum nec Ioanna ipsa dicat cur hoc facere voluisset, nec alium prohibeat, ut quis id tribuat vel timilitati, vel virginali verecundiae, vel femineae arti, etc.: eo fortasse magis, quia Ioanna eadem prima nocte et deinde numquam amplexus maritales repudiavit. De re, tum ab actricis depositione, tum ab examine testium, probatio metus minimè exurgit, concludit vindex s. vinculi. Quibus praenotatis, suppositum fuit diluendum: Dubium an sententia Curiae Burdigalensis sit confirmanda vel infirmanda, in casu. RESOLUTIO. Sacra O. C. re discussa sub die 14 Iulii 1894, censuit respondere: "Dilata et compleantur acta iuxta instructionem dandam a defensore matrimonii ex officio." Reproposita in plenaria Congregatione diei 23 Februarii 1895, responsum fuit: "Dilata, et ad mentem: mens autem fuit: ut matrimonii defensor novam conficiat instructionem, Curiae Burdigalensi transmittendam, ut, testibus ad examen revocatis, eosdem interroget, ut indicent quae sint singularia facta, ex quibus deducunt Ioannam... ex vi et metu a sua matre illatis, consensum dedisse matrimonio cum Ioanne Antonio..." His omnibus iterum ponderatis, sub die 14 Decembris 1895, S. Congregatio respondit: "Ex hactenus deductis non constare de nullitate matrimonii; ideoque sententiam esse confirmandam."

[*Latin ed. p. 521*]

521. ANNECIEN. DISPENSATION FOR MARRIAGE. December 14, 1895. Session 24, Chapter 5, Concerning Reforms. In a certain town of Annecien. On August 22, 1882, the Bishop of Geneva, Mermillod, solemnly celebrated the marriage between a noble young woman, M., twenty years of age, and T, also noble, twenty-seven years of age, who had recently converted from the Calvinist heresy to the Catholic Faith. The spouses, after the marriage ceremony, which was performed with great pomp, as is customary, began their honeymoon. However, as M. . . . recounts, the husband did not seem very attached to her, so that when they arrived

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at a public inn, T. led her to two separate rooms, where they slept apart. He maintained this custom not only during their journey, but even until their permanent separation. Indeed, as the woman asserts, only two or three times, during the entire period of their cohabitation, and only after repeated requests from his wife, did the husband enter the marital bed, and he would leave shortly thereafter, never fulfilling his marital duties. Moreover, if we are to believe M., the husband did not even attempt to consummate the marriage. From the beginning, M. . . . began to complain about T's behavior, not only to her parents, but also to Bishop Mermillod and the Vicar of Lausanne, and she made it clear that the marriage was not consummated. The unfortunate woman endured this miserable state of conjugal life for seven years, until, in October 1889, taking advantage of an opportunity for a change of air, she went to her parents' home for the sake of her health, and never returned to live with her husband. SUMMARY OF THE FACTS.

[*Latin ed. p. 522*]

522 ANNECY. T. . . . nuntiabat solummodo per epistulam uxori, quod causa recusationis debiti maritalis non pendebat a sua voluntate, sed ex irreparabili impotentia. Quatuor annos post separationem, mense Octobri anno 1893, T apud civile tribunal Genevensis causam divortii introduxit, quia M maritalem domum deseruerat. Sed mulier, reconvento actore, mense Iunio anni sequenti, sententiam in suo favore obtinuit, et divortium ex culpa T declaratum fuit. Dum autem causa divortii civilis agitabatur, M. . . . volens consule suae conscientiae, sub die 8 Decembri anno 1893, supplicem dedit libellum Summo Pontifici, petens declarationem nullitatis sui matrimonii, ob viri impotentiam, vel saltem, ut dignaretur dispensare super matrimonio tantummodo rato. Iussu S. C. C., oratricis preces remissae fuere Antistiti Genevensi et Lausannensi, pro informatione, et ut alteri coniugi notificarentur. De quo certior factus T, illico et ipse supplicabat Supremum Pontificem pro dispensatione a matrimonio rato et non consummato. Huiusmodi quoque libellus a S. Congregatio transmissus est Episcopo Genevensi, pro informatione, qui cito accuratam dedit relationem. Tunc S. C. C. commisit Episcopo Anneciensi, in cuius dioecesi matrimonium fuerat celebratum, processum confectionem « tam super asserta nullitate, quam super non consummationem et causis dispensationis, servata forma etc. ». Interea autem factum est, ut M a iudicio recederet; quapropter Curia Anneciensis, ad instantiam tantummodo viri, processuales actus incepit. Excussit primo actorem, qui sub iuramento asseruit, matrimonium non fuisse consummatum propter eius physicam impotentiam; ac postea eius septimae manus testes, qui omnes affirmarunt audivisse inconsummationem matrimonii a coniugibus, a parentibus viri, et a publica fama. Uxor, licet legitime citata,

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iudicio comparere renuit.

[*Latin ed. p. 523*]

ANCIEN. 523. Nevertheless, the Bishop of Annecien transmitted the documents to the Holy Office and issued a decree requesting a dispensation, writing among other things: "Although the medical examination may be lacking, and it is alleged that the marriage was not consummated, it seems to me morally certain." After a few months, M. changed his mind; therefore, the Curia of Annecien, at the mandate of the Holy Office, resumed the investigation, thoroughly questioned the woman and her witnesses, and, transmitting a supplement to the proceedings to the Holy Congregation, persevered in the same request: "Holding without any doubt that the aforementioned marriage was never consummated, I believe that a dispensation should be granted by the Most Holy."

SYNOPTIC DISCUSSION.

DEFENSE. T. . . . , the defender, in the first part of the discussion, endeavored to show that the right to request grace cannot be denied to his client, but rather that he has a most serious reason of necessity to request it. Therefore, the advocate refuted the opinion of those who believe that an action for the dissolution of marriage is not legally admissible, except in the spouse who is innocent and whose interest it is to be freed from the bond. For it is certain and definite in law: if only a separation is being considered, only the innocent spouse is admitted to bring the action; if it is a question of nullity, both. Thus, Leuren, Reiffenst., Schmalzgr., Zallinger, in the Synopsis of authorities, separately published, no. 4.

Moreover, the advocate continues, this must be held in a milder case of dispensation. Dispensation is nothing other than the grace of the Pontiff: but grace is usually granted according to the person and at the discretion of the grantor, and it is especially fitting to grant it to those who deserve it. This grace, in which a perpetual bond is to be dissolved, can be granted not according to the person, nor for merit, but the ministry of justice requires it according to the reasons for granting a dispensation. If evils occur that should be avoided for the public good, the consent of private individuals cannot be considered, and if either spouse refuses, the good of the Church must be consulted.

[*Latin ed. p. 524*]

524 A:\NECIEN. is by dispensation. This is the perpetual discipline of the Church, as the authors cited teach. See Synopsis, author, no. 5 and following. Given these things, the accuser requests from M. . . . that he explain why, throughout the entire judicial inquiry and in the writings addressed to the Most Excellent Prefect, he was so vehemently hostile towards T. . . .

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, to the point of noting "his hypocrisy - the falsity of his character - which had coldly deceived me, and with full knowledge of the matter," and to argue that he should be utterly rejected from the sight of the judge. It is permissible for the spouse to respond truthfully; for, the accuser says, he is indeed deeply sorry for having, through excessive naiveté, undertaken a burden that he did not believe he was capable of bearing with his own strength, and thus having caused harm to his innocent wife. He regrets it, and if it were possible, he would make amends for the damage. But if his good faith is impugned, if he is accused of fraud, deceit, or wickedness, he must consider his reputation and repel the injuries. Let it suffice to recall, the defender of the man insists, how, more than two years after the marriage, M. . . . and his relatives had already long known of the tainted union and the cause of the calamity, and that it had not occurred to the woman, or to others, that T. had deceived his wife with infamous perfidy. And the words of the wife: "My friend, you know, for almost two and a half years we have been living together, and I have had time to get to know you, and to appreciate you. I have appreciated, as I should have, noble sentiments, great qualities of heart and mind, and I can say that I have always been happy and proud to be your wife. I am also grateful for the signs of interest and devotion that I have received from you, and be sure that in this regard nothing leaves me indifferent." However, the accuser notes, when the imputation of deceit is raised, the first question to be asked is, to whose benefit did the accused apply the fraud? For no one, unless he is mad or foolish, is moved to vice without cause. If T. . . . knew himself to be inept, he would not have deceived an honest girl; not as if her fortune were to be di-

[*Latin ed. p. 525*]

ANNECIEN. 525 testified, because it is clear from the testimony of all that the substance of both families is equal. Not because of the nobility of the lineage, for it surpasses the other, if only by a slightly greater nobility. Could he have delighted in the obscenity and sterile frustration within that body? But immediately, when he felt his powers completely failing, he refrained, believing that he would be harming her if he unjustly reproached her. Indeed, it was not his intention from the beginning to abstain from the fruitful union, as his true intention was made known to all: "to form a Christian family through marriage," exclaims the Orator. And if the defender of the marriage bond were to object: that it is suspicious for the spouse who admits himself to be unfit for marriage to request a dispensation, and that he cannot obtain any benefit from it; it could be answered that, since the law grants even to the impotent spouse the faculty of requesting a dispensation, this cannot be undermined by suspicions, but by arguments and proofs. But there were serious reasons why T requested a dispensation from his marriage; for immediately after the flight of his wife, he became

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"the object of a torrent of insults and invectives: the Protestants who had never been able to forgive his conversion, seized this opportunity to show him their extreme malice... he thought of nothing but to flee, and to make himself forgotten." And in this, the orator continues, the unfortunate man followed the advice received from Cardinal Mermillod, shortly before his death; of which Father Frangipani, of the Order of St. Benedict, testifies. Furthermore, several years ago, T considered finding refuge in some religious community, and he had already written letters to the Most Reverend Prefect of the Order, in which he declared his intention of entering a religious community. The defender of the man, proceeding to another part of his argument, maintains that it is so certain that the marriage of these spouses remains unconsummated, that no sane person could doubt it. This, even if material proofs were lacking, would clearly emerge from the source of moral certainty, which should prevail over other proofs, especially in matters of dispensation.

[*Latin ed. p. 526*]

526 ANNECIEPÎ. situations. For, the established jurisprudence testifies, with moral certainty regarding the absence of carnal conjunction, that any examination of the bodies of both spouses is almost superfluous, as can be seen in the Synopsis of authorities, nos. 11 and 12. Among other decisions of the Sacred Congregation of the Council, the case of the marriage of the Canadian couple stands out, which, although the woman had refused to undergo an examination of her body, received a rescript granting a dispensation on January 31, 1863, and was confirmed on May 30, 1863. The moral certainty of the absence of consummation, the advocate stated, is primarily derived from the concordant confession of the spouses. The woman stated: "Mr. T has shown no particular affection. She attributes this coldness to the infirmity from which Mr. T suffers...; and of which he later informed her in writing. The marriage has never been consummated." Nor did the spouse, T, answer differently, when asked, "Has the marriage been consummated? - Not at all, due to the physical impotence on the part of the husband." And when asked again, "How did the harmony between the spouses cease?" he added: "Gradually, without any apparent reason, due to the impossibility of consummating the marriage, and due to the fear I had of causing sadness to my wife." Such testimonies of the parties are to be held in high regard, the defender stated. For, when carefully considered and compared with sound critical rules, with those statements made in court and outside of it, at an unexpected time, and with other types of evidence to be considered, they claim the greatest authority for themselves. However, the testimonies of the spouses are strongly confirmed by the testimonies of witnesses. All the witnesses, along with the Bishop, the advocate of the plaintiff praised the woman's outstanding piety, virtue, and religion, and affirmed that she is incapable of lying or perjury. The witnesses for the man, his advocate

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stated, also said that they should be completely believed. Only one, the priest Clary, protested that he "could not..."

[*Latin ed. p. 527*]

ANNECY. 527. I maintain that, in general, all credibility should be given to the statements of T. . . . concerning her own marital situation. But this exception does not, in my opinion, diminish the credibility of the husband's testimony regarding the consummation of the marriage. For if the priest, Clary, generally expresses doubt or denies that T. . . . could deny [something], saying "I cannot assert," although he had said a short time before, when questioned by the judge, "Indeed, the husband appears to have failed in his marital duty, as I also learned from the statements of the wife's relatives and parents, and moreover, public rumor confirms this." Furthermore, the advocate continues, no one could believe that T. . . . intended to lie about the lack of consummation, and to declare herself inept, which would bring contempt in human society, especially in a populous city. Nor are there reasons for such impudence. There is no conspiracy between the spouses, for they, although they are brought together by the necessity of the matter, are entirely and perpetually opposed to each other in spirit. There is no gain, for both are rich. There is no hope of a better marriage, for T. . . . herself, by declaring herself inept in this trial, requests that she be allowed to embrace a religious life. The Court of Lausanne rightly observed, in its report to the Sacred Congregation of the Council, "Therefore, there is no way to suppose that both spouses invented and conspired to commit a deception in order to evade sacred duties and deceive their ecclesiastical superiors. What they say can only be true." The same is affirmed by the witnesses, who are of the most reliable kind, among the most excellent of the excellent, some of whom shine in the clergy, others in the patrician order, all distinguished by their reputation for religion and probity. Of these, the Bishop of Annecy said, "Their nobility, both of birth and of Christian virtues, is greater than any exception." Given these circumstances, one must either believe that the spouses are truly the best of people, and that so many men, among whom are a Cardinal and Bishops, have acted scurrilously in such a serious matter, without certain knowledge, or that...

[*Latin ed. p. 528*]

528 AN'NECY. They judged that moral certainty was established. Moreover, the arguments concerning the material deficiency are confirmed by that very evidence which, by itself, would be sufficient in every case. For, as the Advocate stated, two expert physicians, whose trustworthiness is not to be doubted, as testified by the very Bishop of Annecy: "I do not doubt that the testimony of physicians regarding the virginity of M. should be given credence," examined the woman four years after the separation from her husband, using the precautions prescribed by medical science.

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Furthermore, Doctor Porte, who examined M. twice, in the years 1893 and 1894, after taking an oath, affirmed: "My conviction that the marriage was not consummated is absolute. The appearance of integrity cannot, in any way, be the effect of a special remedy. It is real and absolute." To this, another testimony fully agrees, which Doctor R. Verdier presented judicially after an examination in the year 1894: "This examination produced in me the complete and absolute conviction that the marriage was not consummated. This condition of the body could not be the effect of certain special remedies." This favorable judgment, given by distinguished doctors, concerning the perfect integrity of the woman, when considered together with the other arguments and indications previously presented, certainly sheds great light upon the non-consummation of the marriage due to the husband's impotence. Moreover, it is well known that the Sacred Congregation [for the Causes of Saints] has, in its gracious judgments, admitted even extrajudicial and supplementary evidence, which, when considered together with the judicial evidence, may move the judge to judge that the marriage was not consummated; as was done in the case of the American marriage on January 25, 1873, and in another case in Frisingen, or Herbipole, concerning Nullities and the Dispensation of marriage, on January 12, 1816 and 1817, and in others. Therefore, rightly, the Bishop of Annecy, as moderator of the proceedings, stated: "Holding without any doubt that the aforementioned marriage was never consummated, I believe that a dispensation should be granted by the Most Holy [Father]."

[*Latin ed. p. 529*]

ANCIEN. 529. Non desunt graves causae ad dispensationem a Summo Principe concedendam. Quarum maxima, ait mulieris orator, invenitur in viri impotentia insanabili, et nuptiis antécédentibus. Quod autem impotentia coniugio praecessisset, arguitur, ex agendi ratione, qui sollicitus fuit prima nuptiarum nocte ac deinceps, iugiter usque ad definitivam separationem, distincto lecto cubare, ut propriam impotentiam, veritus periculum uxori eam ostendendi removeret: qui iugi afficiebatur aversione a rebus uxoriis, et animi abalienatione erga sponsam. Neque minus deducitur esse insanabilem ac perpetuam ex viri spontanea confessione, eo quod plurima pharmaca adhibuerit, quin usquam sanitatem recuperare potuerit. En eius verba ad uxorem scripta die 8 Novembris 1889: « Mais... Laissez-moi vous l'avouer.... combien je souffrais.... d'une défaillance physique indépendante de ma volonté, que j' ai tout fait pour combattre, et dont les conséquences ont été en effet, aussi funestes pour notre bonheur qu' elles sont regrettables pour l'avenir de ma famille. » Quod si in fiorenti aetate curationes ad nihilum valuerunt, nec sperandum post quadragenariam posse viripotentiam excitari. Hinc grave dubium oritur de valore matrimonii cum valde praesumatur contractum cum impedimento naturali dirimente. Et hoc dubium constituere urgentem

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causam ad dispensandum advertit Card. De Luca de matrim, par. 2, disc. 9, n. 8. Viri patrocinator invenit alteram dispensationis causam in animorum dissociatione. Iam M. Iudicem admonet quod « L'intimité et les bons rapports n'ont jamais existé ». At parochus Chuit rem ita enucleat: « J'ai parfaitement connu la mésintelligence habituelle, qui régnait entre les deux époux ». Quod si, ut profitetur, inter infelices coniuges suscitata fuerunt « aliquoties iurgia », quin rixae et clamores intercédèrent, hoc adscribendum est coniugum nobilitati, qui nunquam ad plebeios tumultus corruere solent, sed animorum dissociationem confirmat. Positis huiusmodi Acta, Tom. XXVIII, fasc. CCCXXXIII. 34.

[*Latin ed. p. 530*]

530. The advocates, citing the grave reasons that arise when a dispensation is required, all acknowledge the authority of the canonical writers. Thus, *Clericus de Sac. Matrim.*, decree 15, section 45; Sánchez *de Matrim.*, dispute 16, section 13; and Conscius *de Sep. Tor.*, book 3, chapter 2, sections 117 and following. Furthermore, the aforementioned advocate continues, "No hope of future reconciliation can arise." For familial animosities, scandals, and derision, the vexations of heretics, the judgment of civil magistrates, and even the rebukes of bishops, have perpetually estranged the spouses' affections. When asked by the Judge, "Is every attempt at reconciliation now entirely impossible?" he responded, "Affirmative." And more fully, in his sworn testimony: "Every attempt at reconciliation is, in my judgment, deemed futile." Finally, the advocate concludes, "A grave cause for obtaining a dispensation exists." Having endured the hardships of secular life, in which he experienced the utmost deception and unhappiness, he decided to embrace religion and the monastic life. He communicated this intention in a published book, "from Geneva to Rome," and informed the Prefect of the Sacred Congregation of the Council, requesting permission. However, the writers generally agree that such a cause is sufficient for obtaining a dispensation, as Ursaya notes in *Discipline Eccl.*, volume 3, section 2, dispute 21, section 48.

REMARKS REGARDING THE DEFENDER OF THE SACRED BOND. On the other hand, the defender of the value of marriage points out, above all, how the woman's virginal integrity is the primary argument in cases of non-consummation. The investigation of this matter, being subject to all kinds of deceptive dangers, the Church has established certain laws, by which, if carefully observed, we can attain the truth, and the Sacred Congregation has detailed these laws in the Instruction of August 22, 1840. However, the advocate observes, the precepts of the Instruction were not observed by the delegated judge. For, after neglecting any examination of the woman, when he saw that M. . . . refused to appear in court, he pronounced his judgment with these few words: "Granting a dispensation to the husband who implores this grace from the Most Holy [Father] con-

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cerning a marriage that is valid but not consummated..."

[*Latin ed. p. 531*]

"Given the circumstances, I believe that it is necessary to grant [the request]." And if M. . . . , having changed her mind, presented her case in court, the same judge, while refusing to subject himself to a physical examination according to the rules of law, was content to receive the testimonies of the doctors Porte, "médecin habituel" [regular physician], and Iacobi Reverdin "médecin consultant" [consulting physician], who affirmed that they had examined M. Piaculum, and the advocate stated that these doctors were questioned "regarding the signs and indications of virginity or corruption resulting from the examination, such as the remaining signs and arguments of an intact or corrupted virginal enclosure"; it is sufficient for these doctors to affirm: "My conviction that the marriage has not been consummated is absolute. The appearance of integrity cannot, in any way, be the result of a special remedy. It is real and absolute." Therefore, the plaintiff in the marriage case argues that, since M. . . .'s advocate claims that he cannot trust the assertion of a physical examination made by M. . . . , and that a sample taken from the woman's body is not necessary, he declares that a sworn confession, supported by the testimony of seven witnesses, is not insufficient to prove the lack of consummation of the marriage; and he appeals to chapter 5 of *Laudabilem*, concerning frigidity and malice. The defendant does not object to this argument, because he has repeatedly demonstrated that the doctrine presented by Celestine III in that chapter is far removed from the controversies concerning the consummation of marriage, as far as heaven is from earth. The advocate does not fear to assert that the lack of consummation of the marriage can be proven by an examination performed on the man's body, but that what is recorded in the proceedings does not deserve the name of an examination. "The undersigned, D. Neuhaus Zimerl, declares, under oath, that Mr. T. . . . , born on May 6, 1855, is not, and has never been, either psychologically or physically, in a condition to consummate the marriage with his wife, Madame M, born on July 22, 1862." For such an examination to be considered valid, it must have been performed according to the rules prescribed by the Instruction of the Sacred Congregation, August 1840.

[*Latin ed. p. 532*]

532 ANNECIEN. Concerning the witnesses presented by the spouses, the defender first observed: He could not believe that the very wealthy spouses T... and M had not had several servants, household staff, and acquaintances who, over the long period of seven years during which the spouses had lived together, had witnessed their intimate relations, had heard their conversations with their own ears, and had observed, perhaps, signs and indications of the consummation of the marriage. Indeed, among

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the ranks of witnesses presented by both sides, not a single one of these servants, household staff, acquaintances, or neighbors is mentioned. Witnesses of this kind should certainly have been called, at least by order of the judge. Furthermore, the prosecutor argues, the witnesses presented by the seventh hand are not to be considered trustworthy. For it is established that the confession of the spouses, accompanied by an oath of the seventh hand from relatives or neighbors, if relatives are absent, is required, as Sánchez De Matrim., lib. 7, disput. 108j, n. 7 states, "so that a more careful diligence may be applied to the dissolution of the marriage; which matter is of the greatest importance." But the confession of the spouses, even if supported by an oath of the seventh hand, does not constitute proper proof. Indeed, it presupposes that proof already exists, whether through the appearance of the woman's body, or, as they say, through constriction, or impotence, or through other actions that have been made known among relatives and neighbors at a time when there was no suspicion. And in truth, if judges were to be satisfied with the oath of the spouses and the testimony of relatives or neighbors who swear in good faith in the spouses, then all marriages would be settled. Indeed, in no case does a judge usually give weight to the confessions and oaths of those who have an interest, even if large numbers of witnesses are presented who proclaim them to be entirely trustworthy. Moreover, the prosecutor continues, the confession of the spouses is suspect because not all witnesses who swear the seventh hand are entirely trustworthy to the spouses; nor is it the case that the spouses clearly demonstrate that they are striving for the truth, since one affirms what the other denies, especially concerning attempts at consummation, about which they are not easily deceived.

[*Latin ed. p. 533*]

ANNECY. 553 Having traversed the requirements for the causes of a dispensation, the defender of the sacred bond maintains that, at present, there are entirely just reasons to remain outside the marriage. Indeed, Ursaya, in *Disputationes Eccl.*, volume 3, part 2, discourse 21, number 53 and following, teaches that the Pontiff, when granting a dispensation from marriage, "fulfills his office, according to the paternal providence by which he is bound to avert greater evils and to care for the greater good of his flock." Truly, in this case, the advocate notes, not only do greater evils exist that the Pontiff would avert by granting a dispensation, and the greater good of his flock that he would care for; but, on the contrary, the granting of a dispensation would turn to great harm the Catholic flock. The defender of the sacrament, concerning the matter of Annecy, observes: "Not even one serious reason exists for obtaining a dispensation above a ratified and unconsummated marriage; on the contrary, there are several not insignificant reasons for denying it. For a most grave scandal would be added to the scandal already given to the Calvinists of Geneva. The unhappy

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outcome of this marriage among Catholics has already aroused derision and contempt for the Holy Mother Church to a great extent throughout the entire region. But how much mockery, how many cavilations, would the dispensation of the Supreme Pontiff concerning a marriage already celebrated for twelve years arouse among those same heretics. No one fails to see how many and what evils would befall the Holy Roman Church throughout the entire region of Geneva." On the contrary, the defender of the sacrament continues, the denial of the dispensation may not even be a grave matter for the spouses themselves. For, whatever may be the hope of future reconciliation, it is certain that neither spouse will enter into new marriages. For T. . . . has nothing more than to offer to God through the sacred orders. And M, beyond all doubt, abhors all other marriages. With these premises established, the presumption must be dispelled.

[*Latin ed. p. 534*]

554. ANNECIEN. A question is posed concerning whether consultation with the Most Holy See is required regarding a marriage that has been consummated but not fully consummated in a particular case. RESOLUTION. The Sacred Congregation, after deliberation on December 14, 1895, decided to respond: Affirmative.

GALTELLINOREN. CONCERNING PAROCHIAL RIGHTS. (1) On September 7, 1895. Council of Trent, Session 24, chapter 18, concerning reforms. This matter was initially proposed on June 27, 1891, with the following questions:

1. Whether the right to administer Baptism and to keep the baptismal records remains with the Chapter or with the Canonically appointed Curate in this case.

2. Whether the Chapter, in addition to its chapter functions, has the right to entrust to one or the other of the canons, with the assistance of the beneficiaries, the celebration of other functions, namely, festive Masses or Masses for the dead, novenas, or triduums of prayer, processions, etc., and to receive the fruits from the vestments in this case?

3. Whether the Canonically appointed Curate can, by distinct right, perform the funeral rites with the Chapter present, and whether the ritual absolutions should be performed by the Chapter or by the Canonically appointed Curate in this case?

4. Whether the beneficiaries, commonly called "domarii," are so dependent on the Canonically appointed Curate that they cannot be removed from this dependence by the Archpriest of the Chapter in this case?

5. Whether these same beneficiaries are obligated to assist the Canonically appointed Curate in the preaching of the Gospel and in catechesis in this case?

SUMMARY OF THE MATTER. (1) This question is now presented a

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third time for the judgment of the Fathers. You can find a summary of the first proposition and the resolution of the Holy Congregation in Volume XXIV, page 97; you can find the outcome of the second proposition in Volume XXV, page 215.

[*Latin ed. p. 535*]

GALTELLINOREN. 535 Concerning the proposed doubts, it was decided by the Sacred Congregation to respond, firstly: "The proofs regarding the constant and unchallenged use of the Chapter's authority in administering baptism and maintaining the baptismal records should be extended and supplemented." - Secondly: "Affirmatively, provided that it does not concern purely parochial functions and rights." - Thirdly: "If it concerns the funerals of parishioners, precedence belongs to the Canonically appointed curate by reason of the vestments, and the ritual absolutions belong to the same, by reason of the office. However, if it concerns the funerals of others, everything belongs to the Chapter, namely, precedence and the ritual absolutions." - Fourthly: "Affirmatively, insofar as it concerns the care of souls." - Fifthly: "Affirmatively, provided that the parish priest is impeded." Furthermore, this question was again proposed on April 9, 1892, and it was responded to: "Postpone it to the next meeting, with the same parties." Therefore, on the third judgment of the Sacred Congregation, at the general meeting of May 21, 1892, not only was the first doubt considered, the resolution of which remained pending, but also the third and fifth, for which the Chapter's Patron obtained the benefit of a new hearing. Therefore, this controversy was also proposed on May 31, 1892, with the following formulations of doubt: "1. Does the right to administer baptism and to keep the baptismal records remain with the Chapter, or with the Canonically appointed curate, in this case? 2. Should one adhere to or depart from the decisions in the third doubt in this case? 3. Should one adhere to or depart from the decisions in the fifth doubt in this case?" At the general meeting of July 23, 1892, the Sacred Congregation decided to respond to the proposed doubts, firstly: "Consider both." Secondly: "Adhere to the previous decisions." Thirdly: "Adhere to the previous decisions, and furthermore." The parish priest obtained the benefit of a new hearing concerning the first doubt. Therefore, this question is again proposed. Meanwhile, it should be known that the Chapter has issued a renunciation of the benefit of a new hearing, which its Patron had requested. The doubt to be defined today is, namely: "Whether it is to be confirmed..."

[*Latin ed. p. 536*]

536 GALTELLINO. A decision has been sent, in which the Most Eminent and Reverend Fathers have ruled that the right to administer Baptism and to keep the baptismal records belongs to the parish priest and the Chapter.

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In order that this doubt may be clearly understood, with the addition of facts and legal considerations, it is necessary to recall Volume XXIV, page 97, and Volume XXV, page 213. *Synopsis Disputationum*. DEFENSE OF THE CHAPTER. The Chapter of Galtellino, after having set forth the matter with a more elaborate pen, divides its argument into five points. Firstly, they maintain that the right to administer Baptism and to keep the baptismal records belongs to the Chapter, and they argue that this derives from a habitual care, by virtue of which the parish priest is to be considered a servant or employee of the Chapter, who must be content with the rights and emoluments already assigned to him from its very foundation, as stated by St. Gabriel in *Consilia*, book 2, number 7 and 8, and by De Luca in *Disputationes*, book 22, number 7, on parish priests, and by the Rota in *Romana*, of December 4, 1620, in the case of Coccino. Furthermore, they demonstrate that the habitual care rests with the cathedral chapter of Norensis, first, from the very words of the apostolic executor: "the Chapter will be relieved of the same actual care, retaining the habitual care," and second, from the condition imposed by the Chapter at the time of the parish's erection, in which it stated: "retaining the habitual care." To this is added another declaration of the same Chapter, made shortly before the execution of the apostolic constitution, and the very tenor of the executive decree, which grants permission for the canons to be considered as present in the choir, either to hear sacramental confessions or to preach as assistants to the curate in the city. It cannot be argued from this that the habitual care was not explicitly granted, since the apostolic administrator expressly declared that he had kept in mind and faithfully observed the condition imposed by the Chapter in the execution of the aforementioned constitution. Therefore, it follows that the canons, without the prior permission of the curate, administered the sacrament of Baptism.

[*Latin ed. p. 537*]

GALTELLINOREN. 537. It has been stated that a place for storing books, in which the minister would immediately record the names of those baptized, was designated from the very beginning. Furthermore, it is observed that nothing is more in conformity with the law than that a chapter should be held in a quasi-possession of right, which arose from the beginning and was observed by the Apostolic Administrator himself. Lotter teaches that the best interpreter of the law of prescription is observance. *De re benef. I. 11 n. 125, Card. De Luca De iurep. duc. 60 n. 9 et de benef, disc. 27 n. 18, and that they claim greater authority if they are close to and contemporaneous with the law of prescription; Piton. Disc. Eccl. disc. 139 n. 44. We also have the Sacred Rota in the jurisdiction of Firmana, May 10, 1700, n. 37. Indeed, not only in the interpretative sense, but also in the prescriptive sense, they point out that observance suggests that capitulars should maintain their quasi-possession of right, since it has been established in both civil and

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canon law that, in any cause or concerning any person, the right of a person, a private or public right, is extinguished by forty years of continuous silence. I. 4 Cod. de praescript. 30 vel 40 an. Cap. 6 De praescript. etc. This doctrine is consistent with the opinion of the Sacred Rota, as well as the Sacred Congregation, which, in a case concerning parochial rights in Marsorum, on January 30, 1830, ruled that, notwithstanding the decrees of the sacred visitation, a chapter's right to baptize children and to retain the keys of the baptistery and the sacred oils should be maintained "according to the form of custom." Therefore, the Archbishop of Arborensis, acting as an apostolic delegate in the diocese of Galtellinorensis in 1879, ordered: "in virtue of the powers granted by the Holy See, that the key of the baptistery, and the book of the baptized, should no longer be removed from the common drawer, in which they have been kept until now in this Cathedral, and this until the Holy See decides otherwise." It is believed that this decree, having been approved by the Holy See, has acquired force and authority. In a new proposal for the case, dated April 9, 1892, in order to better declare and support their intention, the parties involved presented the following arguments.

[*Latin ed. p. 538*]

538 G ALTELLINOREN. He added testimonies. Indeed, he presented the deposition of three senior priests, who for many years have been devoted to the service of the cathedral church, stating as follows: that it is true that within the Cathedral there exists a "common chest" in which the keys to the baptismal font are kept, and registers in which each priest daily notes the administration of the sacrament; that each canon possesses the key to the baptismal font, and that no sacrament is administered without permission; that each canon has, by this custom, used this right both before the year 1836, and subsequently, until the present parish priest objected; that if the keys were taken away from the canons, even by the authority of the parish priest, the matter was immediately restored to its former state through the intervention of the Vicar General; and that the canon administering the sacraments is always exempt from the obligation to record them, as testified by Beneficiatus Chrismi, who has performed the duty of recorder for 40 years. Finally, the Chapter invokes the example of the Chapter of the Vatican, in which a similar custom is observed. DEFENSE OF THE PARISH PRIEST. The defender first uses the testimony of the Parish Priest, who states that, upon receiving the canonical benefice, he received from his predecessor a book of baptisms, which he kept with him, and each time he administered baptism, he handed it to those administering the sacrament, so that they might record the act in the book with their own hand, and that only two canons had obtained the key; one of whom received it even before receiving the canonical benefice, and the other seized it while performing the duties of the Vicar General. From this, the Parish Priest argues that

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the Chapter cannot claim any right to the key. And, the advocate argues, rightly, for if the key is with the Parish Priest, it is clear that the canon could not administer baptism at his own discretion without the consent of the Parish Priest. Afterwards, the Parish Priest states that it is customary in the city and diocese for priests called by parents to baptize to be granted the faculty to baptize and to record the act in the book with their own hand. This faculty is more easily...

[*Latin ed. p. 539*]

GALTELLINOREN. 539. It is traditionally held, especially among those of ecclesiastical standing, that this was the case with the Canons, until they presumed it to be a right granted to them. Furthermore, the patron strengthens his argument by citing other witnesses, as affirmed by Professor Salvator Nonni, who states that his predecessor, Michael Guiso, as parish priest, had obtained the faculty to administer the sacrament of baptism, contrary to what was claimed; and he also asserts that, in the year 1843, the parish priest Guiso had suffered vexations due to the actions of the Chapter, and especially of the Capitular Canonries; to the extent that he was prepared to send a messenger to fulfill his pastoral duties. Moreover, the beneficiary Sebastian Cambosu, namely Canon Nieddu, asserts that, even before taking possession of the canonry, he had administered baptisms with the prior permission of the parish priest Guiso, who had given him the key to the chest. The Episcopal Curia testifies: "with the following heading: Cathedral Church of Noren. The baptismal register, beginning in the year 1838, consisting of 190 pages, with the signature 'Guiso Can. Parroco' indicating that the theologian Michael Guiso was the parish priest of this Cathedral Church. The present book, consisting of 390 pages, intended to describe all those baptized in this parish, beginning on January 1, 1856, is signed 'Teol. Michele Guiso Can. Parroco,' and subsequently reads: 'examined by the diocesan Ordinary, and released to the Canon and Parish Priest Teol. Guiso Michele on January 1, 1866, signed Zunnui, Vicario Generale Capitolare.'" Furthermore, the Episcopal Chancellor also declares in the records of the parish that the books had been kept by the parish priest, "who until now had them in his custody." With these points established, the advocate concludes that the reason for the tradition of these books being in the hands of the parish priest is clearly evident; namely, because the baptismal registers were kept only by the parish priest. This is confirmed by the patron through a specific testimony from the Episcopal Official. The advocate, supporting his thesis with other testimonies, emphasizes the judicial testimony given under oath by those involved.

[*Latin ed. p. 540*]

540 G ALTELLINOREN. Those who have diligently served the Cathe-

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dral Church for a considerable period of time. Finally, the patron himself, the Bishop of Noren, testifies, having, during the course of the pastoral visitation, examined the baptismal records and found them lacking the signatures of the administrators of this sacrament; he admonished the canon and parish priest to ensure that this does not occur in the future. According to the patron, the Most Reverend Bishop of Noren confirms this in his letter of December 1, 1891, in which he laments the conduct of a certain Canon, who, to the scandal of the faithful, acted as a godfather to an illegitimate infant after its baptism. Having noted the inconveniences, which necessarily arise from the cumulative administration of baptism, in the following passage, the orator recounts the words of the Most Reverend Bishop of Noren: "We found the baptismal records lacking the signatures of those administering baptism, and we pointed out that, in order to avoid disputes, all circumstances pertaining to the parents, and those chosen 'to the office of godfather and godmother,' should be described." Furthermore, the patron notes that, for these very reasons, the Council of Trent, in Session 24, Chapter 13, concerning reform, mandated that bishops divide the people into certain parishes, assigning to each his own permanent parish priest, namely: "For the safer salvation of the souls entrusted to them, that the people, being divided into certain and proper parishes, may have assigned to each his own permanent and particular parish priest, who may know them, and from whom alone they may lawfully receive the Sacraments." To further this conciliar decree, Pope Pius V, by his Motu Proprio, Constitution *Etsi omnibus*, of November 5, 1571, established permanent vicariates in the basilicas and collegiate churches of the city, for the greater increase of divine worship and the benefit of souls. Moreover, the orator states that the Supreme Pontiff Gregory XVI, in his Constitution of February 1, 1834, concerning the island of Sardinia, also proposed the same end, namely, to increase divine worship and to provide greater benefit to the faithful. For he, observing the care of souls, which was not being exercised with sufficient diligence by the Chapter of Noren, due to the simultaneous...

[*Latin ed. p. 541*]

GALTELLINOREN. 541. Ad implentam munerum parochialium et officiorum capitularium, perpetuo ab exercitio curae animarum liberavit, et eam commendavit uno presbytero, magistero in Theologia, vel iure canonico laureato, qui, una cum presbyteris auxiliariis, curam huiusmodi universam exerceret. Et iure meritoque exclamat patronus: minister baptismi solemniter et ex pastorali officio celebrandi est proprius parochus. Cum vero officium pascendi, seu cura animarum, proxime non proveniat ex ordinatione, sed sit potestas iurisdictionis ab Ecclesia, Praelato Ecclesiastico collata, ideo sacerdotes qui eam iurisdictionem non habent, tale officium exercere non possunt. Quare Tridentina Synodus decrevit: « Cum praecepto divino mandatum sit omnibus, quibus animarum cura commissa est, oves

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suas agnoscere, pro his sacrificium offerre, verbique divini praedicatione Sacramentorum administratione eos admonet et hortatur ut iudicio et veritate pascant et regant ». Cap. 1, Sess. 23, De reform. Contendit postea Orator, idem dicendum esse quoad custodiam librorum, quia parochi tenentur « quatuor libros sive matriculas habere, ut ait Barbosa, in quibus describant primo omnes, qui in Ecclesi a sua baptizantur, cum nominibus parentum, si de legitimo matrimonio nati sunt, et patrinorum, qui eos de baptismo susceperunt ». Imo certum est, iuxta eumdem auctorem, quod ex particula ab huiusmodi libro baptismi per Parochum extracta, probatur quis baptizatus, et illius aetas sit. De off. et potest. Par. par. 1 cap. 7 num. 1 et 4. Exinde docet libros baptizatorum esse caute et religiose custodiendos a Parocho. « Quatuor matriculis seu libris supradictis, bonam custodiam adhibere tenetur Parochus, ne dum possint ad aliorum manus facili negotio pervenire, falsentur vel rumpantur », et docente eodem clarissimo Barbosa, S. Congregatio Episcoporum et Regularium decernit « huiusmodi libros non esse per Episcopum de Parochorum potestate extrahendos, sed penes illos debere conservari », loc. cit. n. 1, 9, 20.

[*Latin ed. p. 542*]

542 GALTELLINO. Therefore, even if the hypothesis were to be made that a custom and practice of baptizing existed with the favor of the Chapter, the patron would not be sustained, because such a custom or practice subverts the hierarchical order, and consequently is unreasonable; indeed, it would be an abuse and a corruption of what has been handed down through the Clergy. *De benef., discur. 68, no. 6.* Furthermore, it is contrary to the liberty and discipline of the Church. For it is known that the sacred canons prescribe that no parish should be subjected to any servitude, nor should its liberty be diminished in any way; indeed, the rights of the pastors must be inviolably observed, because they are due to the community, and not to the individual. *cap. 1, q. 1, causa 13, Cleric.* loc. cit., no. 10. Reiffenstuel, *lib. 1, fit* 4, no. 59. Hence, Amostazo states: "A custom that contradicts the sacred institutions decreed by the fathers, and that introduces an abuse against the discipline and liberty of the Church, is not maintained." *De causis piis, lib. 6, cap. 3, no. 38.* Cardinal De Luca agrees with this in *Depraeem., discur. 24, no. 11.* In this case, the patron observes that a custom is not to be considered proven if it consists of a single act contrary to it, even if there were a thousand acts in favor of the custom; for a single act contrary to it, or different from it, is sufficient to invalidate it. Furthermore, according to the documents presented by the patron, it is evident, from the consent of the predecessor of the current parish priest, that the canons sometimes administered the Sacrament of Baptism, and that, given the circumstances, they were granted permission to do so; and that the current parish priest has always kept the baptismal records. Therefore, the patron concludes that the opponents are calling

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witnesses in vain, if these witnesses do not prove the custom in question, because: 1. they are not witnesses who have seen it for forty years; 2. they are not witnesses who have heard it from their elders, who have also heard it from their elders; 3. finally, because they do not testify that they have never heard or seen the contrary being observed. Moreover, from their depositions, it is evident that these acts were not repeated, thus the patron argues. With these points noted, the supposition must be dismissed.

[*Latin ed. p. 543*]

543 G. OPINION OF ALTELLINO. Doubt as to whether one should adhere to or depart from decisions in a case. RESOLUTION. The Sacred Congregation, after deliberation on September 7, 1895, judged it fitting to respond: One should depart from the decisions, having communicated with the Most Holy Father. FROM WHICH THE FOLLOWING ARE GATHERED: I. From the decree of the Council of Trent, which commands that the people, distinct in their own parishes, should each have their own pastor, for the safer salvation of souls. II. That the parish priest is, by law, a minister of baptism, solemnly and according to his pastoral office. III. Concerning which matter, the parish priest, restored to his office, is to be in full and exclusive administration of the sacraments and custody of the baptismal register, so that, free from disturbances, the same pastor may recognize his own sheep, from their very infancy, through the sacrament of regeneration. AGRIGENTO. MATTER OF A MARRIAGE INDULGENCE. On September 7, 1895. Session 24, chapter 5, concerning reforms. A noble man, Francis, a lord (commonly called a Baron) in the Province of Syracuse, having been captivated by love for a young woman named Joseph, who was barely twenty years of age, asked for her hand in marriage and easily obtained it. On the day appointed for the solemn marriage, Francis requested Salvator, the father of the bride, to postpone the wedding, alleging that he had contracted a venereal disease from which he wished to be cured before the celebration of the marriage. Then the bride's father consulted a doctor, who, after examining Francis's genitals, reported to Salvator that he had found no disease in him that would infect his wife. But in court, the same doctor testified that he had found Francis's testicles in such a condition that they appeared to show signs of atrophy. SUMMARY OF THE FACTS.

[*Latin ed. p. 544*]

544 In Agrigento, however, he wished to signify, rather than to the father, his intention, and summoned Advocate Bartholomew Germain, who warned Joseph's father about Francis's infirmity. But the advocate, as he himself testifies, did not execute the doctor's mandate; therefore, on April 16th of the year 1890, Francis and Joseph were lawfully joined in marriage before the Church, and immediately entered into the marriage bed. How-

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ever, it is alleged that Francis was not equal to fulfilling his conjugal duties; therefore, five or six days after the wedding, Salvator, aware of the situation, took the groom to Palermo, where he consulted with three highly skilled doctors. After examining Francis's genitals, these doctors confirmed that he was suffering from the atrophy that had already been recognized by Doctor Basil. Afterwards, Francis departed from Palermo and returned to his homeland, and he never returned to Leocata to be with his wife. Following these events, Salvator, in order to provide for the condition of his unfortunate daughter, turned to the civil courts, requesting a declaration of nullity of the marriage due to Francis's manifest impotence. Francis vigorously defended himself in this legal proceeding, but the judge pronounced his sentence on May 24th, 1892, fully granting the wishes of Joseph and her parents. A few months after the civil court's judgment, the distressed Joseph presented a petition to the Archbishop, and then to the Roman Pontiff, requesting that the unfortunate marriage be declared invalid, or at the very least, that it be annulled as unconsummated, by pontifical authority. The Sacred Congregation ordered the Archbishop of Agrigento to conduct a judicial investigation, which, after establishing a Tribunal, he carried out through a delegated judge, taking the sworn testimonies of the plaintiff and seven witnesses. Francis also submitted to the judicial interrogation and presented seven witnesses, but he refused to allow his genitals to be examined again by the doctors.

[*Latin ed. p. 545*]

545 AGRIGENTO. A concise discussion: DEFENSE OF THE WOMAN. To prove the lack of consummation of the marriage, the defender of the actress begins by asserting, under oath, the initial claim of both spouses. The defender of the bond, anticipating possible objections, relates the sworn assertions of the spouses, and the orator points out how, in all times, an oath has held great power, and the Sacred Congregation of the Council has solemnly recognized this efficacy of oath-taking in matrimonial cases on numerous occasions. It suffices to mention the case in Parisiensem on December 15, 1894, in which Ernest Lecointe made a declaration, although it appeared as the only indication of a consummated marriage – the affirmation of a religious man, confirmed by an oath. However, the procurator notes that, even in this case, all witnesses, and even the parish priest of Leocata, praise the virtue of Iosepha, and he is certainly to be believed regarding the morals of the young woman. But in this case, the advocate continues, it is easily demonstrated that neither the spouses, by concerted agreement, could have devised a scheme to obtain what they desired through fraud; nor could Franciscus have perjured himself, in order to serve his own interests. For who would say that the spouses conspired with each other, if, after the marriage, their minds were immediately alienated by irreconcilable discord? If, between them, while the civil proceedings to dis-

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solve the marriage were underway, the animosities, quarrels, and disputes became extremely heated, with Iosepha repudiating Franciscus, as being unfit for conjugal duties, and Franciscus accusing Iosepha of calumnies? Furthermore, the orator states, Franciscus could not have lied, for he would certainly have incurred a very serious loss through perjury. For, if he were deemed ineligible by a lay judge, it would immediately follow that the marriage by which Iosepha is joined to him would be dissolved by the authority of the Pontiff, and he would have to abandon all hope of having a wife. Indeed, there is nothing that Franciscus desires more than to expose those who call him cold in matters of affection. Therefore, if Franciscus had urged his wife, the consummation of the marriage would not have been avoided. *Acta, Vol. XXVIII, p. CCCXXXIII.*

[*Latin ed. p. 546*]

546. Agrigento denied it, for this argument provided the best means for him to remove any suspicion of impotence from himself. Furthermore, the spouses, the advocate continues, affirm this, and it is confirmed by the testimonies of witnesses. Indeed, all the witnesses presented by Iosepha are convinced that the marriage, due to the defect with which Francis suffers, was not consummated. Moreover, they declare that this matter caused such distress to Leocata that, four days after the wedding, when the spouses were perpetually separated, it was the talk of everyone. Nor should it be overlooked, the defender of Iosepha states, that even those witnesses whom Francis presents to attest to his infirmity, do not state that the marriage was consummated. But the most powerful arguments, the advocate insists, are to be obtained from those present. It was discovered, on the fourth or fifth day after the wedding, that Francis, having left his wife, went to Palermo to consult with doctors about the integrity of his virility. This is testified to by Iosepha, Francis, Salvator, Iosepha's father, who accompanied Francis, other witnesses, and the very doctors who were consulted. From this, the advocate concludes, the marriage was not consummated at that time; for if it had been consummated, Francis would not have allowed an inquiry to be made as to whether he was fit or not to perform marital duties. However, it was discovered that Francis, after his trip to Palermo, returned to his homeland (Chiaramonte Gulfi), and did not return to Leocata to his wife. This is asserted, besides by the spouses and witnesses, by the parish priest of Leocata and by the Bishop of Agrigento himself. Therefore, the advocate argues, if the marriage was not consummated during those four days in which Iosepha was with her husband, then certainly the spouses, living in such different places afterward, could not have consummated it. Adding to the doctors' judgment, the advocate's defender presents the sworn testimony of the renowned doctor, John Cosentino, who examined Iosepha's genitalia,

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when she, being separated from her husband,

[*Latin ed. p. 547*]

AGRIGENTO 547 had already appealed to a lay judge, seeking to have the marriage declared invalid. However, the young woman herself affirmed her virginity before the Bishop. The advocate now anticipates and addresses certain difficulties that the defender of the marriage often raises in such cases. And, above all, he refutes that customary argument by which the defender of the marriage maintains that no certain signs of virginity can be found; therefore, the statements of the doctors, who testified to it, should not be given credence. For such a conclusion is completely overturned by irrefutable evidence, and the Sacred Congregation of the Council has condemned it six hundred times. Furthermore, the advocate continues, it must be said that if it were objected that the advocate's genitalia were examined by a doctor and not by an obstetrician, as prescribed by the Instruction of August 22, 1840, then the Sacred Congregation of the Council has declared, unless there is some other impediment, that there is no consummation of the marriage if virginity was proven by doctors without obstetricians. Indeed, the advocate observes, there are cases in which the opinion of only one doctor was considered sufficient, even though there were no certain indications that would render the other spouse incapable of cohabitation, and yet a dispensation was granted. – How much more, therefore, should the testimony of one person be considered in this case, when there is no doubt that the vice with which Francis is afflicted makes him frigid in matters of Venus? Moreover, the advocate says, the defender of the marriage would contend that the opinion of the doctor from Cosenza should be disregarded, because he did not observe the rules of law in the examination of the woman. For it must be assumed that the renowned doctor, who was consulted in order to discover signs of virginity, before the woman's genitalia were examined by another doctor, at the behest of a lay judge, adhered to those rules of medicine which he deemed suitable for discovering the truth; otherwise, he would risk his reputation if doctors appointed by the judge reached a contrary judgment. Finally, the advocate of Iosephae notes that the tutor of the marriage will say that we are calling the doctor from Cosenza to our aid in vain.

[*Latin ed. p. 548*]

548. In AGRIGENTO, a case was heard outside of the proper judicial process. For, nothing hinders the authority of a judgment if it was made before the cause was initiated; provided that afterward, the judgment itself, with an oath interposed, was confirmed before the judge. To make this clearer, the advocate pointed out that there are two kinds of judgments in which disputes arise concerning the dissolution of marriages. In one, the spouses

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seek to have the marriage declared null, because of an impediment existing between them. In the other, they seek to have a marriage, legitimately celebrated but not yet consummated, dissolved by the Pope. In the former, the law is strictly observed, and the norms of the laws are followed, because what is due is granted. In the latter, an inquiry is made according to equity and good conscience, with a mitigated interpretation of the strictness of the laws, because what is requested as a favor is granted. Pope Benedict XIV, in his most celebrated constitution *Dei Miseratione*, and the Sacred Congregation of the Council, in its decree of August 22, 1840, regulated these matters in such a way that it is clear from the documents themselves. In this judgment, we follow certain rules not because of a legal prescription, but because of a certain expediency; for it is certain that that persuasion is sufficient which is commonly called moral by theologians; and for the purpose of inducing such persuasion, proofs collected outside of the judgment may be legitimately presented. "When, before a judge, a request is not made for the dissolution of marriage through the way of justice, but a dispensation is sought from the Prince alone through the way of grace, that rigor of proofs which is required by law in the first case should not be present; but the Prince can also be moved by extrajudicial demonstrations, both of the impotence of the man, and of the virginity of the woman." (Ursaya, *Discip. Eccl.*, vol. III, p. II, disc. 22). Furthermore, for the proof of lack of consummation, simply extrajudicial proofs are sufficient and are admitted, both because of the nature of the gracious judgment, and because of the supreme authority of the Sacred Congregation of the Council, which is not bound to observe judicial forms in giving advice. (Conscius, *De separ.*, lib. III, cap. II, § 285 and 286), and others. But, the advocate observes, if the defender of the marriage requests...

[*Latin ed. p. 549*]

AGRIGENTINA 549: Why were Joseph's genitals examined again in ecclesiastical judgment? The answer is that Joseph's father forbade it; however, the daughter was unable to comply with her father's will. But, it is of no consequence for what reason the daughter willingly obeyed her father's prohibition, since it is sufficient to have demonstrated that the marriage of Joseph and Francis was unconsummated. However, the prosecutor for Joseph continues, there are other, and indeed more serious, arguments that support the lack of consummation. Furthermore, the physician Basil, who examined Francis' virility a few days before the marriage, swore under oath that he found the testicles so atrophied that he was certain that Francis was incapable of consummating the marriage. And there is no doubt that he should be believed. This judgment, indeed, was made then, and not today, through deceit, as the advocate Bartholomew Germain testifies, who became so certain of this that he immediately warned Joseph's father, Salvator, to prevent the marriage; which, however, he later confessed that he did

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not do without consideration: the witnesses are the parish priest of Leocata, the magistrate of Leocata, and others who received the same information from Basil, and Francis himself, who, when questioned by the judge, could not deny that he had consulted with Basil at that time. In addition, Basil's opinion was supported by three highly respected physicians of Palermo, who swore that they were convinced that the defect with which Francis suffers prevents the marriage; and that no remedy, which Basil himself had observed, could be devised to cure it. Moreover, the prosecutor argues, the authority of a previous judgment is added to this case. A lay judge of Motuca, on May 24, 1892, after carefully considering the principles of science and the expert advice of other physicians, declared Francis to be incapable of performing the marital act, and declared the marriage null and void. The civil laws, by which we are governed, are far more stringent than the canon laws in dissolving marriages for this reason. They do not suffice that the defect from which the impediment arises is incurable, unless it can also be clearly observed (cod. civ. art. 107), so that a man who is, in fact, incapable of...

[*Latin ed. p. 550*]

550. AGRIGENTO presents a case where a man, though possessing virile organs, is unable to consummate the marriage due to a certain infirmity of the nerves, and the unfortunate wife cannot obtain a divorce. Therefore, the advocate argues that this situation should be considered carefully, even though it is presented by one who lacks the authority granted by the Church to dissolve marriages. However, the advocate continues, this matter requires further examination, as it is clearly demonstrated by the actions of Francis himself, while he attempts to argue the contrary. Indeed, when the long-awaited day of the wedding arrived, he suddenly wished to postpone it, and after the wedding, he lamented the vice by which he felt himself afflicted: "Qualis fui, talis sum, talis ero" (Such as I was, such I am, such I shall be); and he dared not return to his wife after the Panormitan doctors had revealed his infirmity to his father-in-law. Before the civil judge, he confessed that he had urged his wife to consummate the marriage the day after the wedding, so that he would not be considered cold in matters of love, and he immediately retracted this statement as soon as the wife declared that she was prepared to demonstrate her virginity to the doctors. The advocate observes that his tergiversations are ridiculous, as when the cause is explained, why he had never had intercourse with his wife, first he accused the wife of refusing, then he mentioned a new type of illness, and finally, he attributed it to the wife's modesty and the discord that arose with his father-in-law. Furthermore, the advocate points out the impudence that must be noted, in the Ecclesiastical Court, when he recounted incredible and obscene tales, in order to more easily acquire a reputation for shameful impurity; and when summoned twice by the judge, who ordered that his

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virility be examined by doctors in accordance with the law, he was unable to comply, although, at his insistence, the examination was postponed to another day. Moreover, the advocate argues, the arguments presented do not contradict the testimony of Francis and his witnesses, who confirm that he often had intercourse with bad women and conceived a son from a certain brothel. Indeed, the signs that the doctors indicated to demonstrate Francis's impotence are very clear and are evident from the conformation of his genitals themselves. Therefore, such evidence—

[*Latin ed. p. 551*]

AGRIGENTO 551 is not proven guilty, unless Francis or his witnesses demonstrate, to the point of certainty, that he consummated the marriage with a certain woman. But none of these individuals can provide such proof; indeed, from such testimonies, the accuser attempts to argue the contrary, either because one must consider the incredible audacity with which Francis sought to expose his supposed shame to the public, and before the ecclesiastical judge, with a shamefaced countenance, he declared; or because he employed almost all mercenary witnesses; or because the witnesses speak incoherently or contradict each other, as is clearly evident from their testimonies. Furthermore, the advocate states, there are no reasons lacking that could move the mind of the Pontiff. For there exists at least a serious doubt regarding the nullity of the marriage due to the husband's impotence, which doubt always constitutes the most important reason for granting a dispensation, as the Doctors teach. To this, the defender notes, is added a great divergence of spirits. The lay judge cast a stigma upon Francis, which Francis so feared that he would rather be considered an impious man than be deemed cold in matters of love. Once the truth was revealed, Francis was consumed by anger, so that he pursued Joseph and his father with insults and reproaches, calling the former a corrupter of judges, and the latter a false accuser. However, from this divergence of spirits, the desired benefit is most often granted to Joseph, as all authors attest. Thus, Coscio, *de separ. tori*, cap. XVI, lib. 1, § 251, 256, 294; Ursaya, *disc. Eccl. votum-*, IX, p. 11, *disc. q. n.* 14, etc. Finally, the advocate concludes, there is a difference in the souls of the unfortunate Joseph, who, full of youthful vigor, was forced against her will to be bound to perpetual continence.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. On the other hand, the defender of the sacred bond believes, and fears greatly, that Joseph and his father may be acting deceitfully. For it is an easy matter, by means of a certain specimen taken from the body, to demonstrate that Joseph's marriage was not consummated; from which, however, Joseph abstains, at the command of his father. But in law, the advocate states, it

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is provided that the plaintiff, who has a proof in his possession, must...

[*Latin ed. p. 552*]

552 In AGRIGENTINA, the justice of the action is evident; it should not be limited by the bounds of judgment, unless that monument is presented, which ought to hold greater sway in matters concerning marriage. Moreover, the defender of the sacrament notes that this consequence of the law would not be avoided by saying that Joseph had lost her virginity after the husband's departure, because nothing is more established in the forum than that a woman who has lain with her husband, if afterwards she is found to have been corrupted, is not to be considered to have been wronged by anyone other than her legitimate spouse: and thus it must be judged in all cases, in which apodictic arguments to the contrary are not available. The arguments, the defender continues, which Joseph and her father present to establish the lack of consummation of the marriage are of two kinds: one concerns the physical integrity of Joseph, the other concerns the explored genitalia of Francis. But such arguments are not apodictic. And first of all, Francis' impotence is not proven by the testimonies of Joseph, her father, or the doctor Basil. For the testimony of the latter is refuted by six physicians, appointed by the secular tribunal. The secular magistrate first entrusted the examination of Francis' body to Neapolitan experts, Mariano Semmola, Antonio Cardarelli, and Francisco Todaro, who, on November 15, 1890, after performing the work for which they were selected, and therefore free from any bias, meticulously examined everything. Indeed, these doctors testify not only about the health of the individual parts of the body, but furthermore, they swear that the defect observed by Doctor Basil is completely different from atrophy, and they unanimously agree on this judgment. Having overcome this peremptory testimony and judgment of the doctors, Joseph obtained that Francis' body be examined by more experienced individuals. Francis did so, he came to Rome, and allowed his body to be re-examined by more experienced individuals. However, these more experienced individuals, after meticulously examining Francis' body both externally and internally, were unable to find the atrophy that Doctor Basil had observed. Furthermore, the orator argues, Francis' impotence is not proven by the doctors...

[*Latin ed. p. 553*]

AGRIGENTO 553. Basile, Marchesane, Argento, and Ortega, outside the courtroom, devised a scheme that is refuted by other arguments as well. For if Francis were afflicted with such a vice, it would certainly have been divulged in the small town where Francis always lived. But the contrary is asserted by seven witnesses who were examined under oath by the ecclesiastical judge. Therefore, the defender of the marriage provokes laughter when he objects: "It cannot be that the children, whom the woman gave

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birth to while engaging in prostitution, would consider her as their mother, especially since the mother has found the father of her child?" The witnesses indicate the time when the child was born; the witnesses swear that Lucy was separated from her husband; Lucy had another lover, but this man has been dead for three years; they indicate the house that Francis rented, in which Lucy lived while the child was born. In the same way, the advocate is confident that the arguments which the actress presents to defend her physical virginity will be refuted. Indeed, the testimony of the doctor John Cosentino, who reported to the judge on April 22 of the previous year that he visited Joseph and found her to be a virgin, must be rejected, since Clement V, in chapter 2 of Clementine De testib., commands that one should fear the subornation of witnesses after the testimonies have been presented. Furthermore, the advocate of the marriage points out that the doctor Cosentino testified about things that no mortal can testify about. And in truth, even the pillars of the forum know that the signs of virginity or corruption are more or less evident to medical experts; but arguments that are absolutely certain, with all numbers absolutely established, by which experts can make a judgment "in an absolute manner" about the physical virginity of a woman, are a pure dream. As Sánchez De matr. says, book 7, section 108: "Often the eyes and hands of those who examine are deceived; even more so because women use many deceptions, by which they appear to be virgins." To this, the following is added, as demonstrated by Zacchias, Quaestiones medii, legales, title 4, title 2, question number 20 and following. But, the advocate continues, everything is possible for Joseph.

[*Latin ed. p. 554*]

554. Agrigento, endowed with a most esteemed reputation. Indeed, certain norms are established by law, which every magistrate must scrupulously observe, when dealing with a matter brought before his tribunal. Consider this case: Iosepha brought a lawsuit against her husband, Francis, before a lay tribunal, alleging that he was an "unfruitful tree" in their conjugal union. The judge, after consulting with three archiaters (physicians) of the Neapolitan city, ordered that Francis's body be examined, who concluded: that they could not assert that Francis was impotent, and much less that he suffered from perpetual impotence. With this response from the physicians, the tutor (guardian) observed that all laws were crying out for the judge to acquit Francis from the accusation. But, to the contrary, the judge ordered that three other most skilled archiaters of the city examine Francis's body, who, as we have already stated, unanimously declared: that Francis possessed the sexual organs suitable for carnal union. Nevertheless, despite this, the defender (lawyer) states, the judge, on May 24, 1892, rendered a judgment favorable to Iosepha, due to the manifest, perpetual, and pre-existing impotence of the man. And, what is utterly incredible,

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the defender observes, Francis acquiesced to this manifestly unjust and injurious judgment, for reasons, if one excepts the insatiable greed for gold, that seem to serve only to disgrace him. Finally, the orator observes, the investigation conducted by the Agrigento court was not carried out with that immunity from partiality which is necessary, so that the truth may emerge. For, at that time, the judge, while being most humane when questioning Iosepha and the witnesses she presented, was, on the contrary, discourteous and vexatious towards Francis and his witnesses. Furthermore, when Iosepha, to whom the burden of proof lies, refused the examination of her body, both in the civil and in the ecclesiastical court, the most violent presumption should have been directed against her. Nevertheless, the Agrigento judge did not even consider such a presumption; but, on the contrary, Francis, who had nothing to prove, since he was not the one acting, but rather was brought into the lawsuit,

[*Latin ed. p. 555*]

AGRIGENTO has been examined by physicians on more than one occasion, and, by order of the judge, it must undergo a third examination; and since Francis refuses to comply, the judge of Agrigento forms a presumption against Francis; and, using a power that no one has granted him, he declares: "We decree and declare that the marriage, contracted between the aforementioned Francis and Joseph, although it does not clearly demonstrate the husband's impotence, has never been consummated." With these points presented from both sides, the purpose was to resolve the doubt as to whether it is necessary to consult with the Most Holy Congregation regarding a dispensation for a valid but unconsummated marriage in this case. RESOLUTION. After discussion by the Holy Congregation on September 7, 1895, it was decided to respond: "With prior authorization of the proceedings, affirmatively, forbidding the man from entering into other marriages, without the consent of the Congregation." FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS: A decree regulating the ministry of collecting alms by women in pious institutions so that they may exercise works of mercy, dedicating themselves to God. Those women who dedicate themselves to God in pious and religious institutions, and who diligently and extensively perform works of mercy, not only directly, but also seek support for these same works, and therefore deserve great praise for humility, patience, charity, and other virtues. However, since this ministry of collecting alms, due to the nature of women who solicit, and the current condition of human society, is not without dangers unless it is carried out with appropriate precautions, the Holy Congregation of Bishops and Regular Canons, at the request of several bishops, after careful and mature

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consideration, has decided and decreed the following.

[*Latin ed. p. 556*]

556 FROM THE SACRED CONGREGATION, EDICT AND RULES, BOOK I. In the Institutes of the Simple Vows, those engaged in seeking alms for the support of the community must not undertake this task except in the spirit of faith, remembering that they are not seeking a reward for themselves, but for Christ Jesus, mindful of His words: "And the king answering shall say to them: Amen I say to you, as long as you did it to one of these my least brethren, you did it to me." Furthermore, they must treat the local Ordinaries, even if they pass through their territories, with obedience, reverence, and devotion, as if they were parents and patrons, to whom they should turn with confidence for counsel, assistance, and protection in every necessity. II. To the Sisters of the Simple Vows, it is not permitted to seek alms, either within the diocese in which they reside, or outside of it, without the permission of the Ordinary of the place of their residence. III. Those seeking to obtain a stipend outside the diocese of their residence must, moreover, obtain permission from the Ordinary of the place in which they desire to seek alms. IV. Nevertheless, nothing prevents the Superiors, without being asked for permission, from accepting alms freely offered to alleviate the needs of the house or of pious works under their care, or even from obtaining them by letter from honest and benevolent persons, provided that they are not forbidden to do so by their legitimate Superior for a reasonable reason. V. The Ordinary of the place in which the house of the Sisters who wish to seek alms is located shall not grant them permission if: 1° he is not convinced of the true necessity of the house or pious work; 2° if the seeking of alms can be conveniently accomplished by others designated by the Ordinary himself. However, if the need can be met by seeking alms in the place where the Sisters reside, or within their own diocese, the Ordinary shall not grant them permission to collect alms outside the diocese. VI. Both licenses shall be granted freely and in writing, in which any Ordinary may impose laws and conditions, which, considering the circumstances of the place, time, and persons, he shall judge to be more opportune in the Lord. The license from the Ordinary of the house of pious Sisters shall contain letters or instructions to the parish priests or other prudent persons, for the Sisters who are seeking alms within the diocese, or recommendations to the Ordinaries of other dioceses for the Sisters who are seeking alms outside their own diocese. In these instructions, it shall be ordered to the parish priests or other honest persons to provide counsel and assistance to the Sisters as best they can, to oversee their work, and if they discover anything

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improper in them, to report it immediately to the Ordinary. In com

[*Latin ed. p. 557*]

From the Sacred Congregation for Extraordinary Affairs and Regular Discipline, No. 557, the Ordinaries of places are exhorted to protect and assist the Sisters admitted to solicit alms within their respective dioceses, as if they were their own subjects.

VII. No Ordinary of a place shall admit Sisters coming from another diocese to collect alms, unless they have first shown him the same license issued by their own Ordinary. To those Sisters who present such a license, the Ordinary himself, if he so orders, shall grant a license to solicit within his own diocese. However, if Sisters, even though provided with both licenses, conduct themselves poorly in the collection of alms, the Ordinary shall immediately order them to return to their own house, and, if necessary, shall compel them to do so by appropriate means.

VIII. Superiors, especially outside the place where their house is located, shall never send Sisters to solicit alms unless they are two in number, of mature age and character, and within the diocese for no more than one month, outside the diocese for no more than two months, and always provided with a sum of money sufficient to allow them to return home immediately in the event of any unforeseen circumstance. The Sisters soliciting alms shall always and everywhere conduct themselves with propriety, avoiding familiarity with men and useless conversations; they shall avoid loud noises, taverns, and other inappropriate places; nor shall they remain longer in any house than is necessary to await alms. No Sister shall ever go out alone, nor separate herself from her companion, unless compelled by necessity. When traveling, if it can be conveniently done, they shall use the railway; but as much as possible, they shall avoid traveling at night, and shall not leave one place nor arrive at another without first informing those to whom the letters from the Bishop have been given. Upon arriving, they shall present themselves to them and offer prayers, that they may intercede for them to find hospitality in some pious institution for women, or at least with some honest woman, but never in a house where they might be exposed to any danger. They shall not omit their morning and evening prayers; every day they shall seek out one of the neighboring churches and attend Mass there; and each week they shall receive the sacraments of Penance and Holy Eucharist. They shall not solicit alms before sunrise or after sunset. Upon the expiration of the time allotted to them for soliciting, they shall return to their own Superiors without delay and by the most direct route. They shall never demand alms arrogantly or as if they were due, but briefly and humbly, explaining their own poverty and the works of piety for which the alms are intended. If anything is offered spontaneously,

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they shall accept it, otherwise...

[*Latin ed. p. 558*]

558 FROM THE SACRED CONGREGATION, EDICT AND RULES: They should trust patiently in the divine Providence. They must observe most strictly other suitable regulations that may be given by their own Superiors. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation of Bishops and Regular Canons, on the 27th of March, 1896. I. CARD. VERGA, Prefect. A. CAN. BOCCAPOGLI, Sub-Secretary. ABULENSIS. Doubts concerning regular clerics, either expelled or having obtained dispensation from the Apostolic See, etc. Most Blessed Father, John, Bishop of ABULENSIS, humbly prostrate at the feet of Your Holiness, sets forth the following. There are in this Diocese some alumni of Religious Institutes who are ordained in the Sacred Orders, others are expelled, others have obtained dispensation from the Apostolic See, having gone forth from the cloister, but without first having found a suitable Episcopal receiver, nor having been provided for from ecclesiastical resources. According to the Decree of the Most Holy Sacred Congregation of Bishops and Regular Canons of the 4th of November, 1892, the first [group] will remain perpetually suspended, until the Holy See advises them otherwise, and furthermore, until they find a suitable Episcopal receiver, and are provided for from ecclesiastical resources; the second [group], moreover, will be suspended from the exercise of the Orders they have received. The Bishop, as an Orator, because of a sufficient number of secular clergy, and for other just reasons, cannot be a suitable receiver for these alumni; but he is deeply saddened by the most miserable life and the most distressing condition of these individuals, and is daily tormented by their supplications. One of them is already a Priest, and obtains his livelihood through agricultural labor. Wishing to bring some relief to these aforementioned alumni, and to undertake the burdens of a suitable Episcopal receiver on his own behalf, the Bishop, as an Orator, reverently submits the following doubts to Your Holiness for resolution: I. Is it possible to grant these aforementioned alumni permission to exercise the Orders they have received, but at their own discretion, as is customary?

[*Latin ed. p. 559*]

From the Sacred Congregation, Epistolary and Regulatory Decrees, 559: Should a cleric belonging to a different diocese, temporarily residing here, be permitted to assume the obligations of the benevolent Bishop who receives him? II. And if not, what should be done with these poor clerics who neither find a benevolent Bishop to receive them, nor are able to establish a church property for themselves? And God, etc. To the first question, the Sacred Congregation of Eminent and Reverend Cardinals, entrusted with the affairs and consultations of Bishops and Regular Canons, deemed it fit-

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ting to respond as follows: As has been explained, negatively. But the same Sacred Congregation grants the Bishop of Ávila the faculty, so that nothing may hinder him, to permit these students to exercise the sacred Orders for a time deemed suitable by him, as long as they remain in his diocese, with the prior obligation of finding a benevolent Bishop to receive them and of establishing a church property for themselves, according to the form of the Decree "Auctis admodum" or the Writings of the Sacred Congregation, if any exist. Regarding the second point: Provision is made in the first. Rome, November 20, 1895. I. CARD. VERGA, Prefect. A. TROMBETTA, Pro-Secretary. FROM ÁVILA: Doubts regarding the interpretation of the Decree "Auctis admodum" (1). Most Eminent and Reverend Lord Bishop of Ávila, he presents the following: From the Decree "Auctis admodum" of this Sacred Congregation, dated November 4, 1892, it was decreed: That students who have taken solemn or simple vows, whether perpetual or temporary, and who have been expelled or dismissed from the religious order, shall remain perpetually suspended, until the Holy See provides for them in some other way, and furthermore, until they find a benevolent Bishop to receive them, and provide for themselves a church property: But those students who, of their own accord, have requested and obtained dismissal from the Apostolic See, shall not leave the cloister until they find a benevolent Bishop (1) See Vol. X, p. 512; Vol. XXVI, p. 616.

[*Latin ed. p. 560*]

560 FROM THE SACRED CONGREGATION, DECREE AND RULES: If a religious order has not found a suitable bishop to receive them, and has not provided for itself from ecclesiastical resources, they will remain suspended from the exercise of their order. However, certain doubts have arisen concerning the interpretation of this decree in this particular section, which are respectfully submitted to Your Eminence's wisdom: I. Whether the words "having found a suitable bishop to receive them and having provided for themselves from ecclesiastical resources" are to be understood collectively, so that both are necessary to remove the suspension, namely, both finding a suitable bishop to receive them and establishing ecclesiastical resources for themselves, or is it sufficient merely to find a suitable bishop to receive them? II. Whether the words, which are read in number V, "they shall remain suspended from the exercise of their order," are to be understood in such a way that a religious who has obtained Apostolic permission to leave the cloister, without first finding a suitable bishop to receive them or providing for themselves from ecclesiastical resources, is suspended only until a suitable bishop is found to receive them and ecclesiastical resources are established for them, or is he suspended until the suspension is lifted by the Apostolic See, after a suitable bishop has been found to receive them and ecclesiastical resources have been established for them? The Sacred Congregation, after mature deliberation on the affairs

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and consultations of Bishops and Regular Canons, responds: To the first question: Affirmative to the first part; Negative to the second. To the second: Affirmative likewise to the first part; Negative to the second. Given in Rome, from the Secretariat of the Sacred Congregation of Bishops and Regular Canons, this 20th day of November, 1895.

† I. CARD. VERGA, Prefect.

A. TROMBETTA, Pro-Secretary.

[*Latin ed. p. 561*]

561 FROM THE HOLY CONGREGATION FOR RITES: A Doubt Regarding Conventual Mass. The Sacred Congregation for Rites is accustomed to add a clause to the decrees by which it grants the solemn Mass, or even Masses, on some external feast day: provided that the Conventual or Parish Mass, corresponding to the office of the day, is not omitted, where there is an obligation to celebrate it. Furthermore, some Rectors of Churches have humbly requested this declaration from the aforementioned Sacred Congregation; and the Sacred Congregation for Rites, after carefully considering the report of the undersigned Secretary, declared: that the obligation, in the case of the Conventual Mass, corresponding to the office of the day, applies to churches in which the choral office is performed on that day, according to the decree of June 6, 1888, number II; whereas, concerning the Parish Mass, it must conform to the office of the day, when the office is to be performed for the benefit of the people. And thus it responded. On February 21, 1896. CARDINAL ALOISIUS MASELLA, Prefect of the Sacred Congregation. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation. PLATIEN. Various Doubts. The Most Reverend Lord Marianus Palermo, Bishop of Platien, humbly requested the following doubts to be resolved by the Sacred Congregation for Rites: I. Whether, upon the arrival of the Ordinary Bishop at the Cathedral Church for the performance of a divine service, whether he himself is to celebrate, or another, the bells of the campanile tower must be rung? II. Whether, in this case, the canons are obliged to accompany and escort the Bishop, whether he is wearing a cope or a choral habit? III. Whether, in a private exposition, when the people are blessed with the Most Holy Sacrament enclosed in a pyx, the pyx itself must be covered with a humeral veil? IV. Whether, when blessing a cemetery, the church, which is adjacent to it, must also be blessed, and vice versa? Acts, Volume XXVIII, page CCCXXXIII. 36.

[*Latin ed. p. 562*]

562 EX. S. C. RITUUM. Furthermore, the Sacred Congregation of Rites, upon the report of the undersigned Secretary, and after carefully considering the opinion of another of the Masters of the Sacred Liturgical Ceremonies, and having pondered the doubts presented, decided to respond as follows: To Question I: Affirmative, according to the norms of the Ceremo-

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nial of Bishops. To Question II: Adhere to the Ceremonial and Decrees. To Question III: Affirmative, according to the Decree in the aforementioned document. To Question IV: Negative, in both cases. And thus, it was written. On February 21, 1996. C. CARD. L. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. S. ALOISIUS TRIPEPI, Secretary. DECREE whereby the feast of Saint Thomas, Bishop of Canterbury and Martyr, is elevated to a double minor feast for the entire Church. The Most Holy Pope Leo XIII, having been informed by the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, and having gladly accepted the common opinion of the Fathers of Rome and of the Religious Orders dedicated to preserving the sacred rites, deigned to elevate the feast of Saint Thomas, Bishop of Canterbury and Martyr, to a double minor feast for the entire Church; and it was decreed that this feast should henceforth be inscribed under the aforementioned rite in the universal Calendar and in new editions of the Roman Breviary. Provided that nothing contrary to this be observed. On February 24, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. L. S. ALOISIUS TRIPEPI, Secretary. (1) MELITEN. February 23, 1839. Question V: Whether, when blessing the people with the sacred pyx, the priest ought to completely cover it with the extremities of the numbered oblong veil, as prescribed by the Roman Ritual in the distribution of the Holy Eucharist, and not after the distribution, but on another occasion? Answer: It is necessary, when blessing the people with the sacred pyx, to completely cover it with the extremities of the numbered oblong veil.

[*Latin ed. p. 563*]

FROM THE SACRED CONGREGATION OF RITES, 565, QUEBEC. Various Doubts. The Most Reverend Lord Nazarius Begin, Archbishop of Cyrin, Administrator of the Diocese of Quebec, humbly requested the Sacred Congregation of Rites to resolve the following doubts:

I. Given the particular Indulgences granted to the Diocese of Quebec, the solemnity of certain feasts is transferred to the nearest following Sunday, or, if prevented, to the preceding Sunday; and thus, in churches where the Divine Office is celebrated with chanting, Mass, and Vespers, the solemn Masses and Vespers of these feasts are celebrated, with the added commemorations according to the rubrics; while in others, only a single Mass with a reading is celebrated. Hence, the question arises: Does the day on which the Office is celebrated, whether of the transferred or translated solemnity, retain its proper character?

1. Is there a prohibition against celebrating Mass in purely private oratories, and against celebrating a funeral Mass in the presence of the body?

2. Is there an obligation for pastors to offer Mass for the people?

3. Is the faculty granted to the Bishop of conferring the Sacred Orders on festive days of precept?

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II. Whether these same solemnities can be celebrated on the feasts of the Circumcision of the Lord and the Most Holy Trinity, on the octave of the Epiphany, on Palm Sunday, and on Low Sunday, which feasts exclude any other feast, even a Double of the First Class?

III. If several solemnities are to be transferred, can one or the other be omitted at will, or at least simplified by a commemoration under a single conclusion with the prayer of the First Class, or of the feast, or of the solemnity, or by a privilege?

IV. In a parish church whose titular feast was celebrated by the people on that very day out of devotion, must the solemnity nevertheless be celebrated on Sunday?

V. Is the special Indult, granted on May 13, 1855, by which the solemnities are transferred to the following Sunday, and if prevented, to the preceding Sunday, restricted to this very Sunday?

VI. In churches where the solemnity is celebrated according to the Indult of May 13, 1819, with solemn Mass and Vespers, do those who attend these Vespers fulfill their obligation of reciting the Divine Office?

VII. Does the same Indult, granted for churches, comprehend...

[*Latin ed. p. 564*]

564. Does the Sacred Congregation for the Discipline of the Sacraments also extend its decrees to oratories, both public and *privata*? And to what extent? Regarding the second part, a petition is made for the extension of these decrees to *privata* oratories of colleges, hospitals, and other communities, according to the prudent judgment of the Ordinary in each case. And the aforementioned Sacred Congregation, after considering the report of the undersigned Secretary, and after careful deliberation and the unanimous vote of the liturgical commission, decided that the following questions should be answered as follows: To I. Negatively, with regard to the first part. Affirmatively, with regard to the second and third parts. To II. Negatively. To III. Let the transfer of the solemnity be made to the preceding Sunday, free from other obligations. To IV. Affirmatively. To V. Affirmatively. To VI. To the Sacred Congregation of the Council. To VII. Regarding the question: Does the Indult include only public oratories? Regarding the request: It is not advisable. And thus it was written. On March 6, 1896. C. CARD. ALOISI-MASELLA, S. R. C., Prefect. S. A. TRIPEPI, Secretary. *ROMANA*, concerning the intonation of the angelic hymn and other matters. Many requests have been made to the Sacred Congregation for the Discipline of the Sacraments: Whether the intonations of the angelic hymn and the Creed, as well as the individual modulations to be performed by the celebrant in a sung Mass, namely, the prayers, the Preface, the Lord's Prayer, and the corresponding responses pertaining to the choir, must be observed strictly as they are written in the Missal, or whether they may

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be changed, according to the custom of certain churches? And the same Sacred Congregation for the Discipline of the Sacraments, after hearing the opinion of the liturgical commission, and after careful deliberation, decided to respond as follows: Affirmatively, with regard to the first part; negatively, with regard to the second part, and any custom contrary to this should be eliminated, according to.

[*Latin ed. p. 565*]

FROM the Sacred Congregation of Rites, 565, Decree of April 21, 1873. And thus it was decided and ordered to be observed on March 14, 1896.

C. CARD. ALOISI-MASELLA, S. B. C., Prefect.

* S. A. TRIPEPI, Secretary.

BASLE.

Various Doubts.

The Reverend Father E. Iobix, Priest and Editor of the Calendar for the use of the clergy of the Diocese of Basle in Switzerland, with the consent of his Ordinary, humbly submits the following Doubts for appropriate resolution to the Sacred Congregation of Rites, namely:

I. Whether, in the feasts of Saint Peter Damian, on February 23rd, and of Saint Alphonsus M. de Liguori, on August 2nd, the third verse of the hymn "Iste Confessor" should be changed?

II. In the Diocese of Basle, the feast of Saint Nicholas of Flüe, who died on March 21, 1487, is celebrated on March 22nd, with a minor double rite. And if this feast coincides with the feast of Saint Benedict, Abbot, it is observed with a greater double rite, having only a commemoration in the First Vespers. It is asked: If this occurs on a Sunday of the second week of Easter, or on the Sunday of the Passion, and the hymn "Iste Confessor" is to be recited in the First Vespers, should the third verse of the hymn be changed, and should this change be indicated in the new editions of the Diocesan Proper, approved by the Sacred Congregation of Rites on September 30, 1869?

III. The Diocesan Calendar, approved by the Sacred Congregation of Rites, indicates for the second Sunday after Easter, the feast of Saints Sigismund, King, and his companions, with a minor double rite. Whether, before or after the approval of the Calendar, the aforementioned feast has been omitted whenever another feast of a double rite is announced for that Sunday, as has happened this year, in which the feast of Saint Leo IX, Pope, is celebrated with a rite of the second class, the feast of Saints Sigismund and his companions being completely omitted. It is asked: Is the Calendar thus arranged well?

IV. In the Diocese of Basle, the feast of the Holy Relics is celebrated with a greater double rite, on the Sunday within the octave of All Saints. Furthermore, whenever the letter "d" is present in the weekday designation for

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that Sunday, at least during the month of November, the aforementioned Sunday is absent.

[*Latin ed. p. 566*]

566 FROM THE SACRED RITUAL: Indeed, the feast of All Saints is celebrated on the first day of the month, and the following Sunday is the octave of that same feast. The question arises: in this case, should the feast of the Holy Relics be omitted, as has been done up to now, or rather should it be transferred to the first free day, that is, to December 19th? V. In the typical edition of the Roman Breviary, the following rubric is found on September 16th: If the feast of Saints Cornelius and Cyprian falls on a Sunday, the Office of the Sunday is celebrated with the commemoration of these saints in both Vespers and Lauds, and with the IX historical reading, chosen from one of three, and with the commemoration of the saints Euphemia, Lucy, and Geminianus in the first Vespers and Lauds, the reading being omitted. Furthermore, since in the aforementioned case, throughout the world, the feast of the Seven Sorrows of the Blessed Virgin Mary, assigned to September 15th, is observed on a Sunday, it seems that this rubric should be corrected in new editions of the Breviary. Hence, the question arises: how and in what manner should this correction be made? VI. From the SACRED CONGREGATION: By decree of December 8, 1895, concerning the celebration of Mass in a foreign church, it appears that a priest who has a feast of the first class cannot celebrate, unless he celebrates a Mass conforming to his Office, according to the votive rite, when the rite of the foreign church permits Masses for the repose of the soul and votive Masses. What should be done in this case? And the same Sacred Congregation, in response to the report of the undersigned Secretary, after hearing the opinion of the liturgical commission, after duly considering the proposed doubts, decided to respond as follows: To I. Negatively, according to the typical edition and the Roman Martyrology. To II. Affirmatively, as in the feast of Saint Hyacinthus, celebrated on August 16th. To III. Affirmatively, and the feast of Saints Sigismund and Soc, whenever it is impeded, should be entirely omitted. To IV. Affirmatively for the first part, negatively for the second part, unless an Indult for the translation is obtained. To V. Let the Decree be given in Arezzo, June 18, 1895. To VI (1). To VI. A Mass conforming to the Office, whether it is of the first class, or of the second class, or of any other class, and in this case, is a festive Mass; therefore, it is not a votive Mass, nor should it be celebrated according to the votive rite. And thus it responded. On March 14, 1896. C. CARD. ALOISI-MASELLA, Prefect of the SACRED CONGREGATION. (1) This decree is found in Vol. XXII, page 575. TRIPEPI, Secretary.

[*Latin ed. p. 567*]

567 FROM THE SACRED CONGREGATION FOR THE PROPAGA-

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TION OF THE FAITH: Doubts concerning the interpretation of the decree under number 196 of the Council of Baltimore. The following is read from the acts of the Council of Baltimore in the United States of America, under number 196: "Therefore, we exhort Catholic parents not only with paternal love, but we also command them with all the authority we possess, to ensure that they provide a true Christian and Catholic education for their most beloved children, given to them by God, reborn in Christ through baptism, and destined for heaven, and to defend this education entirely and throughout the entire period of childhood and adolescence from the dangers of a purely secular education, and to safeguard it, and therefore to send them to parish schools or other truly Catholic schools, unless, perhaps, the Ordinary, in a particular case, may judge it permissible to do otherwise." Concerning the aforementioned decree of the Council, a Bishop, residing in the Republic of the United States of America, requested a solution to the following doubts from the Sacred Congregation for the Propagation of the Faith: I. Whether I have correctly understood the meaning of decree number 196 of the Third Plenary Council of Baltimore, and especially the words "we command them with all the authority we possess"? II. Whether the Ordinary has the power, with due prudence, to consider parents, led by bad will, who send their children to public schools, as unworthy to receive the sacraments, until they repent? III. Whether the aforementioned synodal decree can be maintained and upheld in the future? However, the Most Eminent Prefect of the Sacred Congregation responded to this Bishop in the following manner: Most Illustrious and Reverend Lord, The zeal of Your Eminence for the religious instruction of the children of this diocese is truly worthy of great praise. This is in accordance with the dispositions of your Third Plenary Council of Baltimore, and also with the intention of His Holiness, as is evident from his most recent Encyclical Letter to the Bishops of the United States of America. Nevertheless, regarding the manner of obligating Catholic parents to send their children to parish schools, this is left to the prudent judgment of the Ordinaries, who...

[*Latin ed. p. 568*]

568 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, with special considerations pertaining to the times, places, and persons involved, they determine, according to their wisdom, what is more expedient and effective for achieving the desired end. In the meantime, I pray to God that He may long preserve you. Most devotedly, your servant, A. CARDINAL LEDOCHOWSKI, Prefect of the Letters. To the Most Reverend Father, Francis Jansen, Archbishop of Neo-Aureliae. Most Illustrious and Reverend Lord, In response to your other letter, which you sent to me on December 27th of the past year, in which you inquire whether it is permissible for a Catholic priest to act as a civil minister in

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the celebration of marriages of Protestants, I inform Your Eminence that it is permissible: for in this case, the priest acts as an authorized witness. In the meantime, I pray to God that He may long preserve you. Most devotedly, your servant, A. CARDINAL LEDOCHOWSKI, Prefect. FROM THE SACRED DATARY LETTERS, concerning matrimonial dispensations. To the Most Illustrious and Reverend Lord. A multitude of petitions for obtaining matrimonial dispensations, concerning the impediment of the first degree of consanguinity, have reached the Most Holy Prince, our Lord, Pope Leo XIII, and, as the evils increase, they weigh heavily upon him. For, observing that granting such concessions leads to unrestrained license, which increases from day to day,

[*Latin ed. p. 569*]

FROM THE SACRED APOSTOLIC CONGREGATION 569: It has come to our attention that certain occasions, offering a convenient opportunity for those about to marry to secretly satisfy their desires, are leading to unhappy consequences and sins, which have already occurred. Lest the leniency of Your Holiness provide an opportunity to weaken the salutary discipline which is commanded by the sanctity of the sacrament, and which is so beneficial to the integrity of morals, the good of society, and the increase of the faithful, We charge the consciences of the Bishops to diligently ensure that those who petition the Holy See are not admitted, unless they present a true and canonical reason, and that they explain, in writing with their own hand, the reasons in each case, as well as the circumstances under which they believe grace should be granted. In this way, the Supreme Pontiff will more safely approve of petitions, whenever He recognizes the necessity for such a dispensation, and when other means of assistance are less available. I am certain that Your Eminence will exert all your efforts to ensure that the wishes of Your Holiness are fulfilled. In the meantime, I offer my humble obedience and commend all to the Lord. Given at Rome, on the 19th day of June, in the year of Our Lord 1895. Your Eminence's true servant, A. Cardinal BIANCHI, Prefect.

FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, FOR THE INQUISITION: Three societies in the United States of America are condemned.

Most Illustrious and Reverend Lord. It is certainly known to Your Eminence that the Most Reverend Archbishops in the ecclesiastical provinces of this Federated Republic have, in their meetings, considered three societies which have flourished here: namely, the Single Brothers (Odd Fellows), the Sons of Temperance, and the Knights of Pythias, and that, with unanimous consent, they have already submitted the matter for the judgment of the

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Apostolic See. Furthermore, the Most Holy Father...

[*Latin ed. p. 570*]

570 From the Most Holy Congregation, Our document was entrusted to the Most Reverend and Eminent Cardinals, together with myself, as General Inquisitors, for examination of the matter. These, in a general Congregation on the fourth day of June, 1894, confirming the judgment already passed concerning certain Societies, decreed as follows: It must be entirely known to all Ordinaries in this region that the faithful must be kept away from the aforementioned three Societies, and from each of them individually, and that the faithful themselves must be warned concerning this matter; and if, even after such warning, they still wish to adhere to these same Societies, and cannot be separated from them with effect, they must be kept away from the reception of the sacraments. The Most Holy Lord fully confirmed and ratified this judgment. Therefore, these matters are hereby signified to Your Eminence, so that through you, notice may be given to all Archbishops, Bishops, and other Ordinaries in these regions, and so that it may be carried out for the good of the souls under their care. In the meantime, I pray that all may be granted to you by God, O.M. Rome, 20th of August, 1894. L. M. CARD. MONACO. Letter from His Eminence, Cardinal Monaco, of Valletta, to the Ordinary of Alexandrinum, concerning condiments made from fat. Dated 25th of March, 1895. (Latin version) In response to Your Eminence's esteemed letter of the 12th of the current month, addressed to Monsignor, the Commissioner of this Supreme Congregation, I inform Your Eminence that on the fourth day of May, 1889, the question was proposed: whether the expression "condiments of fat," used in the grants of indulgences for Lent and for condiments within the year, should be understood as referring to fat from any animal. The Most Eminent Cardinals, Inquisitors General, my colleagues, responded: Affirmative. CARD. In reply to Your Eminence's letter, dated the 12th of the current month, addressed to the Reverend Father, Commissioner of this Supreme Congregation, I inform Your Eminence that on the fourth day of May, 1889, the doubt was proposed: whether the expression "condiments of fat," used in the granting of indulgences for Lent and for condiments within the year, should be understood as referring to fat from any animal; the Most Eminent Cardinals, together with myself, Inquisitors General, responded: Affirmative. MONACO LA VALLETTA.

[*Latin ed. p. 571*]

FROM THE HOLY INQUISITION, DECREE 571, by which a major excommunication is imposed upon the priest Miraglia, unless he repents within fifteen days. Thursday, February 5, 1896. It has come to the knowledge of the Apostolic See that Paul Miraglia, a priest of the diocese of Patti in Sicily, but residing for several months in the diocese of Piacenza,

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without the approval of his proper Ordinary, has vexed and troubled the clergy there, through slander, also published in print, and by bringing several distinguished priests before the tribunals of the laity; and that, having been forbidden by the local Ordinary from exercising any sacred ministry for other, most reprehensible, and stubbornly asserted reasons, he has not only failed to repent, or to seek forgiveness for his errors, but has also raised a banner of rebellion against the same local Ordinary, where he resides, and has hastened towards greater scandals, by, for example, placing a profane table in a certain profane hall, and holding gatherings there, without the invitation of the Bishop; by sacrilegiously performing the Holy Sacrifice of the Mass, and by sacrilegiously distributing the most holy Eucharist; and by falsely boasting that he has the permission of His Holiness, Pope Leo XIII, to commit such infamous acts. Therefore, the Sacred Congregation of the Roman and Universal Inquisition, so that it may not fail in its duty, and so that the salvation of souls may not be exposed to a grave and certain danger from such a serious scandal, since the aforementioned priest, Paul Miraglia, has not been improved by the preceding exhortations and salutary warnings and penalties, but has become more obstinate, and has accumulated new and graver crimes, and has therefore, through a clear, manifest, and proven violation of the norms, fallen into a perpetual irregularity and interdiction from performing the sacred rites; from which he can only be freed by the authority of the Apostolic See: the aforementioned priest, Paul Miraglia, is hereby warned to cease disturbing the people of God, and to repent, and to seek forgiveness from the Bishop, and to obey his commands, and to return to better ways, and to repair the immense scandals he has caused. To this end, fifteen days are peremptorily established from the knowledge of this decree, of which the first five are assigned for the first term of canonical warning, the second five for the second, and the third five for the third; and if these days pass without effect, a major excommunication will be imposed.

[*Latin ed. p. 572*]

572 FROM THE SACRED CONGREGATION, the penalty is incurred by this very act. And this decree, the same Sacred Congregation orders to be communicated to Paul Miraglia in an effective and secure manner, to be affixed publicly in the Sacristies of the City and Diocese of Placentinae, and to be notified to the Ordinary of Piacenza and the Ordinary of Patti. Given in Rome on the day, month, and year mentioned above. L. S. Ios. Mancini, Sacred Roman and Universal Inquisition Notary.

DOUBTS concerning the decree regarding the anticipation and dispensation of the law of fasting and abstinence by Bishops (1). On Thursday, March 18, 1896. After the decree of the Most Holy Office of this Congregation, issued on Thursday, December 5, 1894, which begins with the words

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"Cum recenter," granting the Ordinaries of places the power to anticipate, or even, for very serious reasons, to dispense from the law of fasting and abstinence, on the occasion of solemnities falling on a prohibited day, doubts have arisen in several places concerning the true meaning of this decree, and the following are proposed:

I. Whether, in order for a Bishop to be able to grant a dispensation, is it necessary that the feast be celebrated with a large gathering of the people?

II. Whether the Bishop can grant a dispensation when it concerns only feasts of double obligation, or also when it concerns another feast or another Catholic solemnity, for example, centenaries, pilgrimages, and the like?

III. How should "a large gathering of the people" be understood, whether of people from outside or even from the same city or place?

IV. Whether, among the very serious reasons for which a Bishop can not only anticipate, but also dispense, can a grave danger be cited that would arise if the anticipated abstinence is not observed?

(1) This decree is found in Volume XXVII, page 512.

[*Latin ed. p. 573*]

From the Sacred Congregation of the Inquisition, 573 V. Whether, on days dedicated to fasting, it is permissible for Bishops alone to grant dispensations concerning abstinence, or also to anticipate it?

I. Whether, for a reasonable cause, a Bishop may instruct Parishes to assign a day on which abstinence should be anticipated?

Regarding these doubts, after diligent examination in the General Congregation held on Thursday, March 18, 1896, the Most Eminent and Reverend Lords, the General Inquisitors, having heard the opinion of the Consultors, were commanded to respond as follows:

To I. Affirmative.

To II. Negative concerning the first part; Affirmative concerning the second part; provided that there is a large gathering of the people.

To III. Considering all things, it can also be understood in terms of the gathering of the city or locality, after consultation with the Most Holy [Pope].

To IV. Affirmative, provided that the danger is general.

To V. Affirmative, that is to say, both are prohibited to Bishops.

To VI. Affirmative.

On the following Saturday, the 20th of the same month, the Most Holy Lord Pope Leo XIII, by divine Providence, in his customary audience granted to the Reverend Father, the Assessor, deigned to approve and

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confirm the resolutions of the Fathers.

[*Latin ed. p. 574*]

574 APPENDIX V. EXHIBENS ACTA SEDIS APOST.; QUAE AUT IAMDIU EXARATA SUNT AUT QUAE TEMPESTIVO LATUERUNT EPHEMERIDUM MODERATOREM. —->3rX— S. Poenit. Ap. 29 Novembris 1842. — Vota emissa a protestante. Protestare votum, castitatis nec non paupertatis et obedientiae emisit voce et scripto coram ministro anglicano; quaeritur utrum vim saltem voti simplicis et privati, aut veluti irritum omnino sit habendum in casu conversionis ad religionem catholicam. R. Votum de quo in precibus esse simplex, et voventem teneri ad observantiam voti, si veram habuerit intentionem vovendi. S. C. S. Officii 27 Ianuarii 1892 — Vic. Ap. Victoriae Nyanz. Utrum christiani teneantur defendere regem infidelem et eorumdem infensum hostem, dum insidiatur a subditis. Rex infidelis christianis sibi subiectis insidiatur, vel vult eos hic et nunc perdere, et christianum nomen in suo regno delere. Quum ea meditatur et parat, alii nefarii homines ipsum e suo regno, coniurando et eum debellando, eiicere conantur. — Quaeritur: 1. Utrum christiani positive defendere teneantur eum, nempe tyrannum, qui eos vult hic et nunc trucidare: vel potius possint negative se habere, eum neque debellando neque adiuvando. 2. Quatenus affirmative ad primam partem: postquam e suo regno eiectus fuerit, an christiani eum ad suum regnum revocare, si possint, teneantur; vel potius illius successorem admittere et defendere possint etiam, dato casu, contra priorem, praesertim si religionem toleret vel foveat. R. Ad 1. Prout exponitur, negative ad primam partem; affirmative ad secundam partem. Ad 2. Provisum in 1. S. C. S. Officii 29 Aprilis 1840 — N. Missionis, in Chorea Dubium quoad venditionem mancipii. Unus christianus consuluit me an posset gentilibus vendere unum mancipium quod malae indolis est et nihil vult audire de religione.

[*Latin ed. p. 575*]

APPENDIX V. 575 Our Holy See. If it is not possible to sell this to Christians, nor to release the slave, it was asked whether it could be sold to peaceful peoples. What was the response? R. In the case under consideration, and provided that the slave is not baptized, the owner need not be disturbed. S. C. S. Of the Congregation, March 17, 1847 - Vic. Ap. Siam. Doubts regarding the purchase of slaves. In the Kingdom of Siam, there are three kinds of slaves:— 1. Irredeemable slaves who are sold without a guarantor. If they happen to die, the price of them cannot be recovered from anyone, and is completely lost. — 2. Captives who are released by the king or distributed among mandarins, and if they die, the price of them is also lost in the same way, which is fixed by law at approximately one hundred and fifty francs. — 3. Redeemable slaves, who are purchased under a guarantor, so that if they

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flee, the guarantor either pays the price, or takes the place of the fugitive. If they die, ordinarily only half the price is demanded from the guarantor. According to the laws of Siam, the work of these slaves is considered in place of interest, and, when they redeem themselves, they must pay the full price to the owner. Given these circumstances, the following is asked: 1. Whether Christians can purchase irredeemable slaves, or not. 2. Or at least, can they do so with the tacit intention of releasing them, paying a portion of their price in proportion to their labor? 3. And when the work equals the price, should they release them as free men, or can they keep them as adopted sons, treating them humanely, even against their will? Sometimes it happens that these slaves have children in their servitude: when these children of slaves, having become adults, wish to leave the house of their master, they must pay the master the price of their education, approximately one hundred francs. Furthermore: 4. Could Christians demand this price as compensation for the expenses incurred in their upbringing? It is very difficult to determine the amount of the price to be paid, corresponding to the labor of the slaves, and it is much more difficult to persuade Christians to make such a compensation, given the example of the pagans, who do not concede anything at all. Therefore, we earnestly request the Most Reverend Fathers to deign to describe to us some rules regarding this matter, so that neither the rights of the owners nor those of the slaves are violated. Furthermore, for a more complete understanding of the matter, I translate into Latin from the Siamese language the third article of our rule, which is as follows:

[*Latin ed. p. 576*]

376 APPENDIX V. According to Christian law, the master ought to diminish the price of the slave, when there are reasons for diminishing it, so that he may be set free, when, according to the estimation of the priest and the elders of the town, the slave's work will be worth his price. Furthermore, the priests and elders, when considering such a compensation, must take into account the slave's age: whether he is a boy; whether he is an old man; whether the master bought him out of mercy, or for his own benefit; how much work he has done and for what service; whether the slave is weak; whether he has been ill and for how long; they must also estimate the danger of his condition and the losses that may arise, when the time comes. R. To 1. See Decrees of the Holy Office, ff. I V, March 20, 1686, and September 12, 1776 (1). To 2. See the provision in the preceding. To 3. No. To 4. See the provisions above. The Most Holy decisions were approved by the Em. S. C. of the Holy Office, June 20, 1866. - Vic. Ap. ad Gallas. Doubts concerning the mancipia among the Gallas. The Gallas use mancipia as concubines, very rarely as wives, with some ceremony that does not constitute a true marriage; because, since they are entirely subject to the master, and can be sold at any time, no perpetual bond of marriage is considered to

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exist between them. Therefore, it is asked: 1. Whether a Christian master can tolerate two slaves, still pagans, who, when they first came under his authority, were already living in such a concubinage, and whether he is obliged to separate them, until they become Christians and are joined in a legitimate marriage. 2. Whether a Christian master who possesses several slaves living in true concubinage, even though they are called "marriages," and who desires to enforce the rule of such marriages, can, as soon as the aforementioned slaves show themselves willing to receive baptism and enter into a legitimate marriage, in a new Christian marriage arrangement that he is contemplating, select from both sexes those who show more of the Christian spirit, and who give greater hope of preserving unity and indissolubility, without regard for prior marital bonds, or (as it is more fitting to call it) concubinage, provided that the new parties are mutually affected by affection: can he, therefore, safely separate them from their concubines, unless perhaps the concubine herself prefers to enter into a Christian marriage with each other? (1) See this volume, page 405, 404.

[*Latin ed. p. 577*]

APPENDIX V. 577

3. Whether, at least, a violent separation of concubinage can take place, when one of the parties, whether male or female, is properly disposed to embrace the faith and to celebrate a Christian marriage. This matter is therefore questioned, because such a violent separation might excite astonishment and complaints among less instructed people, as if some injustice were being done to the party who resists, who rejects the Christian religion.

4. Marriage, whether of slaves or of freemen, according to the custom of the Gauls, is dissoluble, at least on the part of the man. Therefore, if two spouses, whether slaves or freemen, who have entered into such a marriage in infidelity, are converted, should they be taught before baptism about the indissolubility of marriage, and immediately joined in Christian marriage on the very day of baptism; or can they even after baptism remain in their state, at least for some time, until they have understood as it is fitting, according to the evangelical precept concerning the indissolubility of marriage?

R. The Apostolic Vicar believes that all unions of infidel slaves among the Gauls are not truly and properly marriages, but merely concubinages. He seems to have arrived at this persuasion for the following reasons, namely, because such unions, although permitted by custom, are entered into without any solemnity; secondly, because since slaves are for the entire duration of their lives under the power of their lord, it is not supposed that there are perpetual bonds of marital society between them; thirdly, because the marriage of slaves, and of all the Gauls in general, is also dissoluble by

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custom, at least on the part of the man. But he will easily see how weak these reasons are: for indeed, solemnities, by themselves, especially among barbarians and infidels, do not pertain to the essence of marriage, which, even without them, can exist, according to natural law. Judgment should not be based on hypotheses and presumptions, but on certain and evident proofs, so that nothing should be declared to be a marriage, the validity of which is not hindered by the divorce itself, as far as the bond is concerned, by a law or custom permitted, unless it is expressly stated in a pact or condition. Therefore, let the Apostolic Vicar beware lest true marriages be imprudently mistaken for concubinages, especially since the same unions of infidel slaves, which he considers to be concubinages, are commonly called marriages, and a violent separation of the parties, as the same Apostolic Vicar states, seems to have the appearance of some injustice among those people. Let him remember that true marriage exists among infidels, and therefore it is not necessary for infidels to be initiated into the Christian religion in order to be able to contract a true and legitimate marriage. Let him also remember to admonish Christian lords not to... (The passage is incomplete).

[*Latin ed. p. 578*]

578 APPENDIX V. that they should exert some influence in arranging the marriages of their servants, or that they should force a particular spouse upon them: for marriages ought to be free, and any coercion that may be employed in them often leads to unhappy consequences. Now, in order to satisfy questions 2 and 3, it is certainly wrong for a Christian master to tolerate the concubinage of his servants, even if they are non-believers; for concubinage is forbidden by natural law, to which both believers and non-believers are bound, and to the observance of which the master is bound to require of his subjects, as it pertains to the order of domestic society. But first, he must diligently investigate whether the servants are actually living in concubinage or in a legitimate marriage. If it is established that they are living in illicit concubinage, and it is not possible to validly contract a marriage between the concubines themselves (which should always be the goal, especially if they have had children from a fornicolous union), then only then may he separate them by force, without preventing them from entering into a legitimate marriage with others, even if they reject the Christian faith and show no inclination to embrace it. Furthermore, the path of reason that a Christian master should follow in permitting or prohibiting the marriages of his non-Christian servants will be determined by the Apostolic Vicar, according to another instruction which is appended to this one and transmitted to him (1). The remaining question is number 4, which assumes (1) The instruction of the Sacred Congregation of the Holy Office (May 31, 1865), to which reference is made, was given to the Superior of the Mission in Dahomey, Africa, and reads as follows: "The

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question you have raised regarding the obligation of Christian masters to permit or prohibit the marriages of their non-Christian servants, who have been accustomed to living with women before their captivity, has been presented to the Most Eminent Inquisitors on the fourth day of the month of May, in the aforementioned year, as was more clearly expressed by you in a letter dated January 7 of the same year, according to the mandate of the aforementioned Cardinals, to those who are appended here, in the following distinct cases. The first case is that of a certain slave who asks a Christian master for a wife, and who, when asked whether he has ever been bound by marriage, replies: that he has indeed lived with women as a husband, but that he does not know what a marriage bond is; that in his region, men live with women who are dismissed at will, or who leave of their own accord to live with other men, without any prior bond; that such is the custom of his region. The master, however, wishing to obtain more certain information, cannot, apart from the above, recognize anything further. — The second case is that of a certain slave who asks his master for a wife, and who, when asked, replies: that according to the custom of his people, he had women before his captivity; among them, one was more important than the others, but that she was not the one he had previously had in the number of his wives; that he did, however, have a previous wife, but that he was not so bound to her that he could not dismiss her when he wished; that women are taken in that condition; that such is the custom in his region. — The third case is that of a certain slave who asks his master for a wife, and who, when asked about prior marital bonds, replies: that he did indeed have a legitimate wife before his captivity, but that it is impossible to know for certain what happened to her; that she may have fled with those who fled in the destruction of the country, perhaps in other regions.

[*Latin ed. p. 579*]

APPENDIX V. 579 Concerning marriages among the Gauls, since, according to their native laws, such marriages are dissoluble, at least "on the part of the man," they are not considered valid, and therefore must be renewed if the spouses are sold or transported to America, or if, as often happens, they are presumed to have died during a sea voyage; but in such cases, no news will ever be received concerning them. They insist, however, that they should be given another wife, as if they had been separated from the first by divorce. — The fourth case is that of a slave who was already married before entering servitude, but with the onset of servitude, he is so separated from his first wife that there is no hope whatsoever of ever possessing her again. They insist, however, that another wife should be given to him, either as if he had been divorced from the first, or because, as they claim, among the Gentiles, at least in more serious cases, it is permitted to have several wives simultaneously; and therefore, it should be permitted to him, who, having lost his first wife, requests another in her place. — The

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fifth case is that of a slave who is requesting a wife, and when asked about the customs of his people, he replies: "In our regions, a woman, still a girl, is betrothed to a man by her parents; she is kept in the parents' power until puberty; then she is given to the bridegroom; but this does not prevent a man from having several wives in this way; and it is customary, if the man wishes, that the woman may be dismissed; if, however, she herself wishes to leave, with the consent of the man, she goes to another; or, even without the man's consent, after the matter has been discussed before arbitrators and the expenses for keeping such a woman are returned to the man, she enters into new marriage; and this is done according to law, as if it were any other contract. He claims to have possessed women in this way, from whom he is now separated by servitude, and he asks that another be given to him. — The sixth case is that of a woman who has been reduced to servitude, and who wishes to be joined in marriage to a man; she says that she had been with a man before entering servitude, but she does not know whether she was a legitimate wife; for, she claims, many women lived in the same house under one man, and she does not know whether she was considered a wife or a concubine. They insist, however, that she should be given to the man in marriage. — The seventh case is that of a Gentile woman who has been separated from her legitimate husband by servitude, so that there is no hope of ever being able to unite with him. The lord, wishing to join her in marriage with another, asks whether this is permissible, as if a divorce had been granted from the first husband, as in the fourth case. After these cases have been carefully considered, the learned Fathers judged as follows. In the first, second, fifth, and sixth cases, it can be seriously doubted whether the marriages in question were true marriages, but rather, as explained above, mere unions with women entered into for lust, and it was considered unjust to condemn those unhappy pagans to perpetual celibacy, and to deprive them of the remedy for their concupiscence that had been given to them by natural law, especially since we are speaking of marriages among infidels, which, since they are not sacraments, certainly do not enjoy the same favor as Christian marriages. Therefore, in the aforementioned cases, namely the first, second, fifth, and sixth, the learned Fathers answered that Christian lords ought to behave in a permissive manner, and therefore should not prevent their slaves from entering into marriage; this, however, with the following additions in the second and sixth cases. Regarding the second case, since two things are stated there simultaneously: 1. that all women in that condition can be dismissed by the man whenever he wishes; 2. that one among them is usually preferred to the others: the learned Fathers decreed that the aforementioned answer applies only to the extent that it is certain that even she who is preferred was also admitted into the union under the

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same condition. As for the sixth case, although it is doubtful.

[*Latin ed. p. 580*]

580 APPENDIX V. that they may be converted; then it is asked whether it is permissible for these spouses, even after baptism, to be released, at least for a certain period of time, if it appears that they are sufficiently grounded in their error concerning the truth of marriage, since the woman, about whom we are speaking here, declares that she does not know whether she was married, or whether she was living in concubinage with her husband, which, since true marriage requires a certain and reciprocal consent, is not easily determined; nevertheless, the matter can be clarified more easily if two things are asked of the woman: 1. whether, at the time she approached her husband, she found other women already living with him in a marital manner; 2. whether that husband was accustomed to dismissing wives at his pleasure and taking others. These questions, too, can be asked with greater diligence, as the Most Holy Fathers have judged. For both of these will add considerable weight to the aforementioned doubt, and will suggest more and more that the relationship began as concubinage rather than true marriage. But the Most Holy Fathers considered the third, fourth, and seventh cases to be entirely different. For the third admits that he had a legitimate wife when he was captured, and the woman in the seventh case states that she had a legitimate husband; and the one in the fourth case asserts that he was bound in marriage. All of these clearly express a true and proper marriage, so that a new marriage would be adulterous; for it is not permissible to doubt that polygamy and divorce are expressly forbidden by divine law, both to Christians and to non-believers, as Innocent III teaches in chapter *Gaudeamus*, on divorces. But what is added by him, concerning whom we are speaking in the third case, that it is now impossible for him to know for certain whether his wife is still alive or has died, the Most Holy Fathers judged to be of no benefit to a new marriage. For the obligation of the marital bond is certain, and yet its dissolution by death has not been proven by any agreement, since simple ignorance suggests death no more than life; and indeed, in doubt, death is to be presumed rather than life. Therefore, the full force of the impediment remains, according to the explicit teaching of chapter *In praesentia*, on betrothals, in the marriages of both non-believers and Christians, since it is based on a quality common to both, which is indissolubility. Therefore, the Most Holy Fathers answered, just as in the third case as in the fourth and seventh, that Christian lords should prevent these slaves from entering into a new marriage, unless, perhaps, it can be demonstrated with sufficient certainty (that is, not with single conjectures, but certainly with conjectures joined together that provide moral certainty) that their legitimate spouse has truly died. Furthermore, it should not escape your notice that the same is the most certain and easiest way to resolve such difficulties, if the non-believers,

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about whom we are speaking, are converted to the Christian faith. For if this is done, then you will also be able to use the Pauline privilege and other Catholic laws regarding the marriage of women, and you will be able to obtain a dispensation from the inquiry concerning the first spouse, whenever it cannot be done in practice, or if it were done, it would be of no benefit, at least summarily and extrajudicially. Finally, it must not be overlooked that the Sacred Congregation also wished to point out that, on occasion, Christian lords should be reminded not to use any force, or to impose a spouse upon them, in these marriages of slaves. For marriages must be free, and any coercion that is used in them often has difficult consequences. In more difficult cases, you should appeal, setting forth all the circumstances."

[*Latin ed. p. 581*]

APPENDIX V. 581 •Concerning the Dissolubility of Marriage. Regarding the supposition or hypothesis mentioned above, it is a perverse opinion of the contracting parties, even if confirmed by civil laws or customs, that the bond of marriage can be dissolved; this, by itself, does not invalidate the validity of the marriage, unless this opinion is included in the agreement as a condition for actually entering into the marriage; in that case, the marriage becomes null and void, as always happens when a condition is attached to the marriage that is contrary to its very essence. -As for the question raised, it is not only wrong to leave spouses in that error after their baptism, but they should be admitted to baptism only if they have been properly instructed about the indissolubility of marriage and are prepared to observe the divine precept. S. C. S. Office, August 24, 1842 - Vic. Ap. Tunk. Occid. Doubts concerning expenses to be incurred for the worship of ancestors. 1. According to the civil law of this Kingdom, a portion of the property called *phauJcuong-koa*, which is intended for the worship of ancestors, is prohibited from being sold and in any way alienated, and the fruits derived from it must be spent solely for the worship of ancestors. (In wills, each person is obligated to bequeath one-tenth of their property to the eldest son to perform sacrifices and other ceremonies for the worship of ancestors; without this bequest, the will is null. Therefore, Christians include this provision in their wills to ensure its validity; but they do not intend thereby to prescribe superstitions, and only the customary offerings are made according to the usage of the Church). Therefore, the question arises as to how to act towards Christians who accuse themselves before the sacred court of having sold the aforementioned portion of the inheritance, or of having consumed the fruits derived from it for profane purposes. 2. The aforementioned portion, as one-tenth of the family's property, is, by law, to be assigned to the eldest male child; but in the absence of male offspring, the law stipulates that the eldest son of the brother, and, in his absence, the younger brother, shall be considered the eldest child, and therefore, in addition to the aforementioned portion of *phan-kuong-koa*,

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which is given to him to care for the worship of ancestors, he is also entitled to receive one portion of the inheritance, as are the other children. Many are displeased that a larger portion of their property passes to others to the detriment of their children; therefore, they try in every possible way to defraud the law so that their children may receive a larger portion of the family property, so that the brother's son receives nothing except what cannot absolutely be denied, even before the judge.

[*Latin ed. p. 582*]

582 APPENDIX V. [He] proclaims... Having stated these things, the question is asked whether such a manner of acting constitutes a sin, contrary to justice, so that there is an obligation to restore [what was taken].

Response to 1. If the testator included the words in question in the will solely for the validity of the will, then the aforementioned Christians should not be troubled, and one-tenth should be given to the heir, or heirs, according to the law; but if the will expresses the testator's intention that one-tenth be given to the Catholic cult, then, with regard to the past, the aforementioned Most Reverend Fathers [Emi DD.] said that a petition should be made to the Most Holy Father for the faculty of validating the alienations and disposals in question, provided that some pious work be undertaken for the expiation of the souls of the faithful, with the express prohibition of any ethnic cult (1); with regard to the future, however, the pious will of the testator should be observed.

Response to 2. The aforementioned should not be troubled. The Most Holy Father [Gregory XVI] approved these resolutions and granted the Very Reverend Father, Vicar Apostolic of Tunkin, the faculty of validating the alienations and disposals in question, according to the votes of the Fathers.

Sacred Congregation of the Propagation of the Faith, January 14, 1846 – Tche-Kiang and Kiang-si. A certain Bonzus, seeking to give a name to the true religion, asks whether he can retain what he had previously acquired in the ethnic office. Bonzus (a certain one), prepared to send forth messages of the errors of ethnic superstitions, and to name [things] within the Holy Catholic Church, asks whether it is permissible for him to retain what he had previously received in the ethnic office, and what he had acquired in the practice of the medical art.

Response. It is not certain that this should trouble [anyone], provided that the ethnic priests no longer derive their sustenance from this source, since it is true that pagan priests have not intervened. And in truth, there is no reason to doubt the benefits of the medical art, since they obtain their livelihood from elsewhere, and are honored in that place. Furthermore, the things that Bonzus requested, although legitimately obtained, seem to belong to the [person's] own nation. By his own right and with his consent,

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and with due merit (1).

In the letter of the Sacred Congregation of the Propagation of the Faith, September 17, 1842, addressed to the Vicar Apostolic of Tunkin, the Orient, the following is stated: "With regard to the solution of the previous question, certain things must be added here in the name of the Supreme [Authority]. It is said: 'One-tenth should be given to the heir or heirs, so that the case is foreseen in which several heirs are present together, that is, co-heirs, among whom the aforementioned one-tenth must be divided, taking into account the quota or share of the inheritance belonging to each, according to the will of the testator.' It is also said: 'With the express prohibition of any ethnic cult, so that the faithful may know that it is not permitted to them, even in a simulated manner: for from the very circumstances of the case, it is clear that they may, in this case, sin, so that, in fact, they may seem to obey the precept of the law.'"

[*Latin ed. p. 583*]

APPENDIX V. 585. It is decreed that the aforementioned limitation [on usury] is valid, provided that no certain injustice arises from another source. Indeed, the words: "Render to each one what is due to him; and whatever you would not have done to yourselves, do not do to others," which flow from the very law of nature, hold sway throughout all nations. Therefore, if anyone, whether in the practice of medicine or in the exercise of the sacerdotal office, has knowingly received something unjustly, it is necessary for him to restore it to the owner or his heir; or, if both are uncertain, it must be given to the poor, in whose name the same thing is received, since it does not seem to arise from any particular circumstance. S. C. S. Officii, April 17, 1749 - Prefect of Missions, Tunis. A doubt concerning a loan of money given to Jews. Jewish merchants, residing in Tunis, formerly engaged in a partnership with the Turks, and invested their money in ships that were fighting against Christians. As a result of this, the practice arose among Christians of lending money to the Jews on loan, and of receiving interest, three percent per month, even with collateral; however, there was the danger of losing both the collateral and the principal sum, since the collateral of many was not secure, and at times some lost both the collateral and the principal. Now, the Bey has forbidden the Jews from engaging in commerce with the Turks on ships, under penalty of a fine and even loss of life. Therefore, I desire to know how I should act in the future, and what interest the faithful captives may rightfully demand, with a safe conscience. French merchants, and others who are free, when they lend money to each other in commerce, usually demand one percent per month; which has been permitted by the merchant guild of Cento. But captives may demand a higher interest, due to the unjust captivity and the danger of losing the principal sum, as often happens; indeed, the Jews themselves spontaneously offer three percent; I

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believe that they may do so according to the former custom. Furthermore, it must be noted that the native Jews are so treacherous towards the faithful that they do not miss an opportunity to betray them. R. Let an instruction be sent to Father Charles Felix, a missionary of the Order of Capuchins, in which, according to the circular letter of His Holiness to the Bishops of Italy, dated November 1, 1745, it should be made clear that contracts, in order to be valid and produce their intended effect, must have their proper designation, namely, censuses, maritime bills of exchange, bills of exchange due at market, lost profits and certain damages, according to the well-known requirements of Paul de Castro, or...

[*Latin ed. p. 584*]

584 APPENDIX V. Concerning compensatory fruits and similar matters, so that legitimate fruits may be lawfully paid, these must be considered as mutual obligations, entirely excluding any usury. INSTRUCTION OF THE SUPREME HOLY OFFICE ON THE MATTER OF FAITH — In accordance with the letters of Pope Benedict XIV, it will be understood that contracts involving interest on money lent are illicit when they do not bear the denomination of true bills of exchange, or promissory notes, whether written or issued in the market or by a real company, or when they do not contain a compensatory clause for the loss suffered or the profit lost, so that the lender may receive, in addition to the principal, only such interest as is sufficient to compensate for the loss he has suffered, or the profit he has lost; therefore, if the aforementioned denominations or the aforementioned compensatory clauses are lacking in the contract, then it cannot be constituted as a contract of partnership, but rather as a loan, and therefore it is unlawful in any way to receive or demand anything beyond the principal or the agreed sum, whether from the poor or from the wealthy. Following these rules prescribed by the Most Holy Pope in his circular letter, the aforementioned Father can understand how he should act regarding contracts that Christians entering captivity enter into with Hebrew merchants, which it is not lawful to allow without the aforementioned conditions. However, when between the one who lends his money and the merchant who receives it with collateral, a certain sum is agreed upon, and the lender secures his principal, yet a certain profit is agreed upon beyond the principal, then this is not a true contract of partnership; therefore, whatever is received is contrary to justice and unlawful, even if the lender does not intend to lend the aforementioned money as a loan; but, only in the case where the aforementioned clauses of compensation are present, can the lender demand from the capitalist, beyond the principal, interest sufficient to compensate for the loss he suffers, or the profit he loses. However, due to a risk arising not from the nature of the transaction itself, but from some other external event, to which risk the lender exposes his principal, the merchant may demand a profit proportionate to the risk, be-

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yond the principal. But since it is very difficult in practice to properly assess the risk, and it is very dangerous to demand an interest proportional to the risk, therefore, for the security of the consciences of Christian captives, it is considered safer that the aforementioned Father should encourage them to abstain from such contracts, by making it clear to them the danger in which they incur, and by advising them to spend their money in other contracts that are truly lawful, which have their own proper denomination, such as sales or real partnerships, in which, with diligence, they may lawfully receive an honest profit from their money.

[*Latin ed. p. 585*]

585. MOTU PROPRIO. By the Most Holy Order of Our Lord, Pope Leo XIII, Concerning the Promotion of the Catholic Cause in a Harmonious Manner Among the Eastern Christians. The favorable circumstances which Divine Providence has most graciously granted to Us, as We, with apostolic concern, look upon the Christian East, certainly strengthen and encourage Us, so that We may pursue Our undertakings with all diligence and hope. Indeed, certain acts have already been issued by Us, especially the Constitution *Orientalium* in the year 1884, whereby certain matters have been suitably declared and decreed: which, in other ways, would contribute to the revival of the study and esteem of the ancient religion in those nations, to the strengthening of their union with the Chair of Peter, and to the fostering of reconciliation among the dissenting. However, that the aforementioned plans may proceed more properly and yield more abundant results, We deem it best to append to the Constitution several chapters of exhortations, as an addition thereto; namely, concerning the common manner of thinking and acting, which is most necessary for such important matters.

For among the Eastern Christians, a singular and altogether unique condition of both people and regions has existed from ancient times. Indeed, frequently in the same and identical locality, different rites are observed, and therefore there are as many priests observing various rites, and more administrators for each. Moreover, there are not a few Latin priests, whom the Apostolic See is accustomed to send for their assistance and relief. Furthermore, there are those who, for the strengthening of Catholic unity, perform their duties as delegates of the Roman Pontiff, carrying out His mandates and interpreting His will. Therefore, if these individuals are not moved in each of their endeavors by the same holy purpose and salutary intention, setting aside every private cause, and if they are not united in fraternal affection, then their labors will not be able to produce the desired results, nor will they fulfill the expectations. Indeed, the intimate union and agreement of intentions, as is most fitting for ministers of God, so commend the Catholic Church in the opinion of men, that... (The sentence

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is incomplete in the original text).

[*Latin ed. p. 586*]

586 BY A PAPAL ACT, he has not once, but repeatedly, drawn back those who were estranged, with a certain gentle encouragement, or even with his own intervention. It is fitting, therefore, that he should first give the example to our Delegates and to the Venerable Patriarchs, since they precede others in rank and power; and the Apostle's admonition seems especially directed to them: "Loving one another with the charity of brotherhood: with honour preventing one another" (1). From this, it is clear that they will draw good things, and that which is so desirable in the present time, so that they may better and more happily safeguard their own dignity. Indeed, the course of events in the progress of the Catholic cause urgently demands that the persons and the duties of these men be commended in every way, and that they increase daily. This is so important to us that we have considered certain thoughts and concerns in this very matter to be excellently placed. For no one can deny that, among Catholics, there should be no lack of those safeguards and ornaments by which patriarchal dignity is abundantly adorned among those who are separated [from the Church]. It has been observed that the name of the Apostolic See flourishes all the more there, and that its virtue is developed more fully, the more honour accompanies its representatives. Therefore, we have resolved to take steps to ensure that this consultation is suitable for both, the Patriarchs and the Delegates, and at the same time, that the benefits of the works of the Church are increased. Indeed, we have decided to grant them a certain annual support, with the pious help of the Catholics. Moreover, as we have said, the Patriarchs should strive, with a confident and fraternal spirit, to maintain communion of counsel on important matters with our Delegates, through letters; and furthermore, for the sake of convenience, so that those matters which are to be brought before the Apostolic See may proceed and be settled more quickly. But one thing, because of its importance, we deem worthy of our special encouragement, and indeed of our command: namely, that the Patriarchs should hold meetings with the Apostolic Delegates, at least twice a year, at a time and place agreed upon by them. If this is done properly, it will inspire the hearts of men with more than words can express, and will provide a way to maintain a similar course of action. Thus, gathered in the Lord, they will first consider the provinces entrusted to them, and consider the state of religion and its honour in those places, and the progress that is being made among them (1).

(1) Rom. 12:10.

[*Latin ed. p. 587*]

BY A PAPAL ACT 587, bishops have been created; what are their studies, and those of the clergy, concerning those who dissent; what is the

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will required to achieve unity in these matters, and other matters that are opportune to know. Then, matters proper and particular to each will be presented, in which the prudence and experience of those deliberating will be employed. And the causes of the provincial bishops, if any exist, may be settled, with accurate accounts, fairly and justly: but their rights, which are sacred to the Christian name, must be preserved and maintained. Then, matters concerning the proper administration of the faithful, the discipline of the clergy, the institutions of monks or other pious orders, the needs of missions, the decorum of divine worship, and related matters will be discussed, which must be considered with the utmost diligence and care: and it is necessary to provide, as far as possible, with certain and common methods, so that the Catholic religion may preserve and greatly increase its fruits. We wish to bring forward three matters that are most suitable to us, or rather, to recall them, since we have touched upon almost the same things on other occasions. — First, it is necessary to expend careful efforts to ensure that students of the sacred order are properly instructed and cultivated in doctrine, in the sanctity of life, and in the knowledge of sacred things. Once advice has been given, it will certainly be easier to see how each Patriarch has properly established his seminaries for the clergy, and how they may gradually be expanded and flourish: so that, indeed, there may be an abundance and excellence of evangelical workers, sufficient for the growing needs, and which will add reverence to the Catholic name. The good outcome of this endeavor can be favored by native priests, whom Rome frequently sends to the East from its own colleges, instructed with no small measure of intelligence, virtue, and spirit. The Apostolic Delegates will certainly do well in this regard if they take care to ensure that suitable men are also invited from among the Latin clergy, who are prepared to offer helpful assistance in the education of the clergy. In this matter, we cannot fail to honor with praise some religious families, whose diligent and zealous efforts have long been known to us, and to whom much grace has been granted in this regard by those from the East. — Secondly, with no less diligence and care, it is necessary to support and increase schools for the education of children. It is clear of itself how important it is that, from the earliest age, along with the beginnings of letters, they absorb nothing contrary to the truth and to Catholic institutions; all the more so because even sons of prudent and wealthy parents are daily failing in this matter. Therefore, it is necessary to establish sound foundations—

[*Latin ed. p. 588*]

588 BY A PAPAL ACT, the fundamental principles and the love of religion are so imparted to tender minds, that they may be deeply affected and nurtured towards the Catholic profession: and indeed, no other, whether more diligent in this matter or more fruitful, will be as effective as those who have devoted themselves to sacred sodalities from their youth. More-

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over, from such a discipline, in which those who teach religion and morals impart more through their own example than through precepts, it is easily seen that students will readily receive and cultivate the seeds of the priesthood or of religious perfection: and it is certainly a cause for great joy and benefit that more and more of both sexes are thus encouraged. — Thirdly, it seems equally fruitful to strive that similar publications, or ephemerides, carefully and moderately prepared, are widely disseminated. Such writings, as the times and morals demand, conveniently serve religion, either to refute what calumny or error may be directed against it, or to foster the study of faith and to encourage it in the minds of the faithful: especially where there is not so frequent a supply of priests, providing nourishment of doctrine and holy exhortation. It must also be noted that Catholics, by reading such writings, learn what is happening in various places concerning matters connected with religion: such as the excellent deeds or undertakings of brothers, the dangers arising from the deceptions of adversaries, the laborious care of their pastors and the Holy See, the joys and sorrows of the Church; which, when frequently known, certainly provide good assistance for imitation, charity, and generous constancy in the faith. — We have now described these three types of support individually, hoping that, above all, they will produce many good results according to our wishes; and for this reason, we also intend to contribute, as far as we are able, to the support of these endeavors. This will be done in due time and place through our delegates: who, in turn, will have the task of reporting to the Holy See on what has been accomplished in these assemblies. Furthermore, consideration must be given to the duties that will be entrusted to the delegates themselves, who will be present with those engaged in these missions throughout the regions. There is no doubt that both parties, remembering for what name and authority they have been sent, and for what most salutary purpose they must cooperate, will strive to maintain inviolable true concord, both in their opinions and in their actions. However, for the better—

[*Latin ed. p. 589*]

BY A PAPAL ACT 589 concerning matters of governance, it has been deemed necessary to modify certain aspects of the existing legal order; and We have therefore commanded, through a specific decree, that these matters be addressed by the Sacred Congregation for Propagating the Christian Faith. Therefore, let the Delegates diligently and with all their strength undertake this task, so that whatever is issued by the Apostolic See, both through this decree and subsequently as circumstances require, may have full effect. Furthermore, let the Superiors of the Missions demonstrate their diligence and obedience: let them not undertake matters of greater importance pertaining to their jurisdiction without consulting with and obtaining the approval of the Delegates; and let them be willing to have the Delegates,

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by virtue of their office, informed of any matters that need to be communicated to the Apostolic See. Moreover, let the Delegates remember that it is their duty to be vigilant, to provide, and to insist that the prescriptions of the Constitution for the Oriental Churches be observed faithfully and with reverence by all those to whom they apply. In this regard, it is especially important that nothing be permitted that would undermine the Latin Institutes, which in many places are so greatly contributing to the growth of the Catholic faith. For it is of the utmost importance that the opinion held by some from the East, as if the Latin Church were seeking to deprive them of something pertaining to their own rights, privileges, or ritual customs, be completely dispelled and refuted. Let the same Delegates apply particular diligence and kindness to the Latin priests who are engaged in missionary work in their respective territories. Let them offer them counsel and support in the difficulties they often encounter, whether from circumstances or from people, and let them never cease to encourage the Eastern clergy to embrace and cherish the abundance of the apostolic ministry, which they will be able to foster and maintain, both by becoming accustomed to the language and customs of the others, and by duly honoring the sacred institutions handed down from their ancestors. However, nothing will certainly be more effective than the example of concord and benevolence that the Delegates and others acting under their authority should provide; and We have repeatedly emphasized this. And there will certainly be opportunities to demonstrate and testify to such sentiments. These opportunities will arise, for example, if the Delegates and others occasionally participate in solemn celebrations of the sacred rites of the Orient; and conversely, if they occasionally invite the Eastern clergy to participate in solemnities celebrated according to the Latin rite. This, above all, should be done whenever a ceremony of particular importance is held for the sake of the Church or the Roman Pontiff. For in this way, the desire for mutual respect and charity can be fostered, while the bonds of the same faith and communion are strengthened.

[*Latin ed. p. 590*]

590 BY A PAPAL ACT, the bonds of common motherhood are strengthened, and obedience and piety towards the Successor of the blessed Peter are increased, he whom the Lord Christ established as the center of holy unity and salvation. Therefore, all that we have signified, declared, and established in these letters, we wish and command to remain firm and valid by our authority. Given in Rome, at Saint Peter's, on the nineteenth day of March, in the year one thousand eight hundred and sixty-six, in the nineteenth year of our pontificate. LEO XIII, POPE. FROM THE HOLY CONGREGATION FOR THE COUNCIL OF WARSAW, REGARDING THE NULLITY OF MARRIAGE. On June 16, 1894, and December 14, 1895. A SUMMARY OF THE FACTS. George and Joanna were married on

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May 24, in the year 1884, in the parish church of Saint Boniface in Ixelles, near Brussels, before the Reverend Father Dhanis, then pastor of the same church of Saint Boniface, and in the presence of two legitimate witnesses, publicly, before the church, indeed with no small solemnity and ceremony. This fact is so certain and undoubted that it has never been questioned by anyone, and would be considered a matter of public record. At the time of the marriage, George resided in Warsaw, in the parish of Saint Cross, where, according to an authentic testimony presented, the marriage banns of George and Joanna were proclaimed. However, in the same authentic testimony, it is soon added: "A delegation to the person of the Reverend Father Dhanis, pastor of the parish of Saint Boniface in Ixelles, to bless the marriage of the aforementioned couple, was not granted by the parish office; otherwise, it would appear in the records of the place."

[*Latin ed. p. 591*]

WARSAW. 591, a note arrives, as is customary when similar delegations are involved. Furthermore, there is no doubt that George, after leaving Warsaw on April 1, 1884, in order to travel to Belgium to celebrate his marriage, resided in a hotel in Brussels, commonly called "Y Botel de France," which is certainly located in the parish of Saint Gudula and outside the parish of Saint Boniface. Joanna, although she had a canonical residence with her parents for a long time in the parish of Saint Boniface, at the time of the marriage celebration with George, resided in a house in the parish of Saint Aegidius. It is clear that the fact of residing in the parish of Saint Aegidius can be deduced from the allegations, and it is certainly beyond all doubt that the house inhabited by Joanna, located at Chaussee de Charleroi, number 2, is within the boundaries of the parish of Saint Aegidius and outside the parish of Saint Boniface. In the year 1891, a man approached the Warsaw court to obtain a separation from the marriage bed due to clandestine adultery. The court requested information from the Archbishop of Mechlin to ascertain the truth. He, upon sending the records, noted that the practice of the pastors of the city of Brussels, of mutually delegating themselves for an indefinite period, with the knowledge and consent of the Ordinary, to assist at the marriages of spouses who simulate a residence, should not be postponed.

A SYNOPTIC DISCUSSION

VOTE OF THE THEOLOGIAN. The consultant reduced the entire question to this: whether the Reverend Mr. Dhanis, pastor of Saint Boniface, was legitimately competent to assist in the celebration of the marriage of Joanna and George by virtue of any legitimate delegation, or not. Therefore, if the plaintiff, Joanna, can prove with certain and undeniable arguments that the pastor Dhanis was not legitimately delegated to that assistance, then

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the marriage of Joanna is null and void. Before I proceed to the canonical response to this question, two things seem to need to be noted: the case involves...

[*Latin ed. p. 592*]

592. VARSOVIA. De matrimonio: postquam bannos praecepti coram vero et optimo parrocho, scilicet R.D. Domino Dhanis, et duobus testibus legitimis, publice in facie Ecclesiae cum extraordinaria solemnitate et pompa celebrati sunt. Hoc matrimonium, usque ad Concilium Tridentinum, nisi per summum abusum verborum potuisset appellari clandestinum, sed tamquam actus publicus et solemnis admissum fuisset. Si Concilium Tridentinum novam quandam formam substantialem ad validam celebrationem matrimonii constituit, scopum suum principalem Sessio XXIV, cap. 1, de reformatione matrimoniis, his verbis manifestat: "Cum Sacra Synodus animadvertat, prohibitiones illas, id est, matrimoniorum clandestinorum, propter hominum inobedientiam iam non prodesse, et gravia peccata perpendat, quae ex eisdem clandestinis coniugiis ortum habent, praesertim vero eorum, qui in statu damnationis permanent, dum priore uxore, cum qua clam contraxerint relicta, cum alia palam contrahunt, et cum ea in perpetuo adulterio vivunt, cui malo, cum ab Ecclesia, quae de occultis non iudicat, succurri non possit, nisi efficacius aliquid remedium adhibeatur, idcirco..." Quod gravissimum malum a Concilio Tridentino non esset efficaciter sublatus, si propter quaestiones haud raro obscuras et implicatas de delegatione ad assistendum atque de domicilio, matrimonium publice celebratum declararetur nullum et irritum. Quin imo, ex huiusmodi declaratione non solum sequeretur periculum animarum, ut temporibus ante Concilium Tridentinum, si nonobstante valido matrimonio clandestino, sive occulto, publicum matrimonium novum celebratum est, sed etiam gravissimum scandalum populi, qui actum publicum et notorium ob rationes occultas et obscuras videt rescissum. Quare, cum Concilium Tridentinum evidenter primo loco id intendere, ut publice et in foro externo constet de facto celebrationis matrimonii, cavendum est, ne per subtilitates et argutias advocatorum et actorum impugnantium matrimoniorum valorem lex Tridentina in contrariam detorqueatur partem.

[*Latin ed. p. 593*]

WARSAW. 593 Another matter which seems worthy of note is this: that if, in every declaration of nullity of marriage made by the party seeking to invalidate the bond, certain and undeniable arguments are to be presented, this is especially true in our case. For in the cause of Joanna, the validity of the marriage is impugned, because the Reverend Dom. Dhanis, the parish priest of St. Boniface, did not possess the ordinary power to assist in the case, nor did he possess delegated power. Moreover, if the parish

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priest of St. Aegidius, within whose parish Joanna resided canonically at the time of the marriage, were to openly deny having given permission to the parish priest of St. Boniface to assist in the marriage of Joanna, then the burden of proof that such permission was indeed given would lie with the parish priest of St. Boniface and the contracting parties. But in our case, the parish priest of St. Aegidius, who governed that parish at the time of Joanna's marriage, has long since died, and he never denied that he had given such permission, nor did he oppose the celebration of this marriage in the church of St. Boniface. We have a classic witness in this regard, the Reverend Dom. Bossaerts, now the parish priest in Anderlecht, and previously from the year 1872 until the year 1887, the parochial vicar in the church of St. Aegidius, that is, at the very time of Joanna's marriage. This witness, when questioned by the ecclesiastical judge, responded: "I must suppose that Mr. the parish priest Dhanis had an understanding with Mr. the parish priest De Saegher; in any case, I have no recollection of any claim or protest that was made regarding the celebration of this marriage at St. Boniface." Therefore, since it is not the proper parish priest who denies that the parish priest of St. Boniface acted with legitimate delegation, but rather others, the proof of the license not having been given must be demanded of the plaintiff with even greater rigor, especially since the parish priest Dhanis himself has long since died and cannot defend himself, and since the plaintiff does not assert that a license was given in order to uphold the validity of her marriage, but rather denies the legitimate delegation of the parish priest Dhanis to impugn the validity of her marriage, which is extremely odious and inconvenient to her, indeed, in order to obtain a decree of nullity, *Acta*, Volume XXVIII, page CCCXXXIV. 38.

[*Latin ed. p. 594*]

594. VARSAVIA. There is also an easy solution to another pending dispute concerning separation from the marriage bed and cohabitation due to adultery committed by one of the parties. Furthermore, this delegation to assist can be given and is often given orally, without witnesses, through private letters; for the Council of Trent, Session XXIV, chapter 1, concerning marriage, attached another priest to the delegation. Cf. Schmalzgr., 1, I, vol. 3, no. 190. Therefore, unless a broad path is opened to challenge marriages due to a license not properly granted and approved, anyone who, apart from the parish priest, denies that a priest assisting in an already contracted marriage was licensed, must prove this himself, as Sánchez, De matr., 1, III, disp. 37, no. 5, and others rightly hold; the defender of the bond, the Sacred Congregation of the Council, maintains this. With these observations made, it was judged: "It does not appear that the marriage is null." For: 1. Reverend Father Dhanis, the parish priest of St. Boniface, at least very probably, if not morally certainly, assisted at the marriage of Joanna and George, by a special delegation from Reverend Father Saegher, the parish

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priest of St. Giles; 2. and even if Reverend Father Dhanis did not have that special delegation from Father Saegher in this marriage ceremony, he had such a broad general delegation that the validity of the marriage of Joanna and George cannot be called into question; 3. the canonical arguments with which the patron of the actress Joanna challenges the validity of this marriage are not only not certain, but barely reach the level of probability, and much less do they surpass it. But with these three propositions proven, it manifestly follows that the nullity of the marriage in this case cannot be declared. I. Concerning the special delegation of Reverend Father Dhanis. Since the two priests in question are now deceased, this question cannot be definitively settled by their personal testimonies. Therefore, recourse must be had to legitimate indications, presumptions, indirect arguments. From book II, title 2, section 3, concerning presumptions, it is known that, generally, it is presumed for any official that...

[*Latin ed. p. 595*]

WARSAW. 595. He has properly administered those matters pertaining to his office. Cf. Schmalzgr. 1. II. vol. 23, no. 34. Furthermore, he who has been diligent in the past is presumed to be so in the future, and from the commonly used manner of acting of a man, it is rightly concluded that he will act in the same way in a particular case. Cf. chap. 3, 6, 9, X, de praes. II, 23. Therefore, a more effective proof is required from him, in our case from the actress, who wishes to prove something that is not likely, as has wisely been established in chap. 10, X, de praesumpt. II, 23. But in our case, we are dealing with two priests, both honest and upright, therefore, until the contrary is conclusively proven, it must be entirely presumed that all that pertained to their office in this marriage celebration was properly administered. Moreover, specifically, the Reverend Mr. Saegher, whom the Reverend Mr. Dhanis used as a good neighbor in a familiar manner, was infirm and advanced in age, and therefore extremely lenient in granting delegations and permissions. Indeed, Mr. Saegher himself endeavored to free himself from the ceremonies; in which speeches were to be given to the future spouses. This is certainly a remarkable circumstance in the marriage of Joanna; for that speech to the future spouses should have been given in the French language, which the Reverend Mr. Saegher, our good priest from Brabant, did not speak very well. Finally, Mr. Saegher, for the sake of not a few people, only with difficulty granted permissions in writing, therefore, it would be surprising if he had not given this delegation not in writing, but verbally, to the Reverend Mr. Dhanis. Now, if we turn to Mr. Dhanis, all agree that he was a zealous priest, very knowledgeable in matters of marriage, a true example of careful observance in matrimonial matters, and a counselor to his confreres in the same difficulties of marriage. This is primarily based on the testimony of the Most Reverend Cardinal and Archbishop of Mechelen. This outstanding testimony from the Most

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Reverend Primate of Mechelen...

[*Latin ed. p. 596*]

596 VARSAVIEN. The assertion concerning him is greatly corroborated, and indeed confirmed with the utmost force, by the testimonies of the parochial vicars, who have often been praised, and who, through long personal experience, know Reverend Father Dhanis very well. Indeed, Reverend Father Dhanis, being endowed with these qualities, and having been described by trustworthy witnesses as an example of a diligent, expert, and prudent pastor, clearly knew that the house inhabited by the family of Joanna, at the time of the marriage celebration, located at No. 2 Chaussée de Charleroi, was not within the boundaries of the parish of Saint Boniface, but belonged to the parish of Saint Giles. This is clearly evident from the testimonies of Joanna and her mother. The fact that these two women testified is clearly confirmed by the Reverend Fathers Verley and Vereeken, who were vicars in the parish of Saint Boniface. But, given such knowledge in Reverend Father Dhanis, no title could have appeared to him, by which, according to a certain right and without legitimate delegation, he could properly assist at the marriage of Joanna. Certainly not because of Joanna's true residence being in the parish of Saint Boniface. For it was very evident to him that the aforementioned house, No. 2 Chaussée de Charleroi, was outside his parish, and he also knew very well that the family of Joanna had left the parish of Saint Boniface in order to reside at the aforementioned location, No. 2, at the time of the marriage celebration. For the mother of Joanna testifies in the new Mechlin documents that Reverend Father Dhanis knew of the change of residence; this is also suggested by the entire manner in which Reverend Father Dhanis acted in that conversation with the mother, his hesitation, consultation of a book, his initial refutation, and his final concession. Furthermore, this pastor was a friend of the family of Joanna, who was well-known and prominent in the entire region; but the father of Joanna, in the year 1883, sold his house in the parish of Saint Boniface and moved away, and subsequently occupied a new house at No. 2 Chaussée. Such actions are not usually characteristic of a prudent and experienced pastor. Furthermore, Reverend Father Dhanis never, in fact, believed that...

[*Latin ed. p. 597*]

WARSAW. 597. It has again become evident, according to its own law, that the matter is competent, because the family of Joanna has, in order to facilitate a civil marriage, acquired a civil domicile once more within the same parish of Saint Boniface, by mere inscription in the civil registry of the suburb of Ixelles. For it is altogether absurd to suppose that a man so well versed in the law of marriage would ignore those fundamental notions concerning canonical domicile, which is entirely distinct from a mere civil

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domicile, which is acquired by mere inscription in the municipal registry, without any actual habitation in the place of domicile. Finally, unless we are willing to admit some error or deception, Mr. Dhanis did not use the general and reciprocal delegation of the parishes of that district, as all the priests examined in this process unanimously testify. For it was a marriage that had been long prepared, and Mr. Dhanis had known for several weeks, through conversations with the mother of Joanna, that the marriage was imminent. Therefore, considering all the circumstances presented up to this point, and taking into account the individuals involved, and especially considering the qualities and character of the two pastors, the Reverend Mr. Dhanis and the Reverend Mr. Saegher, it spontaneously appears that a special delegation to Mr. Dhanis must be admitted. If this delegation is admitted, everything coheres and is easily explained; but if it is denied, a true enigma and mystery is created. Hence, if the Sacred Office, for example, the Sacred Congregation for Inquiries, the Sacred Congregation for the Propagation of the Faith, in a very serious question of proving the death of the other spouse, when other arguments are lacking, finally admit proof "from conjectures, presumptions, indications, and any additions whatsoever," provided that "from the totality of the circumstances, that moral certainty can arise which is necessary to render judgment"; a fortiori, such proof must be admitted in our case, where even the mere probability in favor of the marriage is solidly demonstrated, and the action of the opposing party, challenging the validity of the marriage, is rendered null and void. For it is incumbent upon them to provide certain and irrefutable proof of the nullity of the marriage, which they have failed to do.

[*Latin ed. p. 598*]

598. VARSAVIEN. It is clear that this certainty cannot be attained, if only probable and truly solid reasons are adduced in favor of the validity of the marriage bond; therefore, much more certainly, the proof of nullity is established, if against it, morally certain, or at least highly probable, arguments can be presented, as is the case in our instance concerning that special delegation, against which no certain and conclusive arguments are put forward. However, in order that the truth may be fully evident, the arguments presented against that special delegation must be examined and considered. Firstly, the objection that the written document of that delegation cannot be produced is of no consequence. For, as has already been demonstrated above, the Council of Trent, in its first decree, in chapter [1], does not in any way require a written document, either for the validity or for the lawfulness of the delegation to assist in the celebration of marriage, nor does it in any way exclude a license given orally, as is commonly held by theologians. Cf. Schmalzgr., 1. c. Furthermore, the character of Mr. Saegher, the mutual friendship of both pastors, and the testimonies of priests who were formerly parish vicars in those two parishes, strongly suggest that

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that license was indeed given orally by Mr. Saegher. Moreover, a proof is demanded that is practically impossible. For such a delegation, if it had been given in writing, as is customary, on a separate sheet, would certainly have perished on the occasion of the death of Mr. Dhanis, where, unfortunately, far too many writings were burned and destroyed, as even the defender of the marriage bond of the Mechlin Court testifies. Nor does the second objection have greater force, namely, that there remains no trace of the proclamations made in the parish of Saint Boniface. For the book of proclamations of the parish of Saint Boniface of that year, 1884, in which the marriage of Joanna was celebrated, and indeed of other years, together with many other documents, was deleted. Hence, it is also evident from the book of proclamations that no other proclamations were made during those years. But who would say that in that entire, populous parish of Saint Boniface, no proclamations were made during that entire time?

[*Latin ed. p. 599*]

WARSAW. 599. Hence, there can be no doubt that announcements were made in the church of St. Boniface. For they ought to have been made there, even if the marriage of Joanna had been celebrated in the church of St. Giles. For the bride had resided for a very long time in the parish of St. Boniface, and had only left it after scarcely ten months had elapsed. Therefore, considering the prudent nature of the Reverend Mr. Dhanis, he certainly made the public announcements required by law in his own parish. This is confirmed all the more by the fact that no announcements concerning the marriage of Joanna were made in the church of St. Giles. This omission is easily explained if the Reverend Mr. Saegher, by carefully considering the end of the announcements and interpreting the diocesan statutes of Mechlin broadly, refrained from announcing the marriage of Joanna, who had recently arrived in his parish. Furthermore, as is evident from the account of Joanna's mother, the bride and groom did not present themselves to the pastor of St. Giles, the Reverend Mr. Saegher, but the entire matter of the marriage was conducted with the Reverend Mr. Dhanis by Joanna's mother. Therefore, it is not surprising that Mr. Saegher did not announce this marriage in his church; but it would truly be surprising if a marriage celebrated in Belgium had not been announced anywhere within the country, in some parish or other. This would have happened if the announcements had not been made in the church of St. Boniface. Moreover, the difficulty is raised that in the marriage book of the parish of St. Boniface, according to the authentic text and signed by the Reverend Mr. Dhanis, it is written "eoo hac-" i.e., Joanna is from the parish of St. Boniface, and the words "by the delegate of the pastor of St. Giles" are not found, which were added in a copy given by the new pastor of St. Boniface. This difficulty could be raised against the special delegation of Mr. Dhanis, but as I will point out in this place, it is not against the validity of the

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marriage of Joanna, and it could be raised more effectively before the acts of the new Mechlin process arrived: but after examining those new acts, this difficulty receives a proper solution along with its related matters. For, with the Reverend Mr. Vereeken and the Mechlin defender, it can be said with complete probability that the words "ex hac" were due to a momentary...

[*Latin ed. p. 600*]

600. It is recorded that a certain misunderstanding occurred concerning the case of Mr. Dhanis. This explanation is more easily accepted, since in Belgium, parish priests often consult the civil register, which is provided by the civil authorities, when recording marriages, or at least they examine and consult that civil register. However, in our case, Joanna was again registered in the civil register as residing in Ixelles, or in the parish of St. Boniface. Therefore, since the same Joanna had, until the most recent times, been a member of the parish of St. Boniface, and since that fictitious residence did not clearly appear in the civil register, Mr. Dhanis could more easily have made a mistake. This explanation is not contradicted by the example cited, where Mr. Dhanis explicitly adds, "before a duly appointed representative." For in that entirely different example, the case clearly concerned outsiders, who had perhaps previously lived in concubinage, and who were now members of the Society of St. Francis Regis, and one of whom, as a witness testified, had regularized his marriage. Under these circumstances, the error of Mr. Dhanis cannot be admitted, as correctly noted by the defender from Mechelen. Therefore, if on one side we have a pious priest, prudent, and well-instructed in matters of marriage, and on the other side, two entries are recorded in the marriage register, which, considering all the circumstances, are more likely to be erroneous, then certainly a prudent and discerning judge will at least have doubts, and will not, with such an uncertain foundation, render a judgment against the validity of the marriage. But if anyone, despite all the arguments presented up to this point, were to maintain that Mr. Dhanis truly erred concerning Joanna's parish affiliation, and that with those words in the marriage register, "she is from here," he truly indicated that he knew Joanna to be his parishioner, then it must be conceded that such an error, in a man such as Mr. Dhanis, who is described by unanimous testimony as being of such character, would be blameless and not due to the negligence of the priest; for the faults of a pious priest must be proven, not excused.

[*Latin ed. p. 601*]

WARSAW. 601: Even in this hypothesis of error, which I can scarcely consider truly and solidly probable, nothing is determined against the validity of the marriage of Joanna; for there exists a general delegation, which, according to the practice of the parish priests of Brussels, the Reverend Mr. Dhanis certainly possessed in this case. And so, the matter must now be dis-

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cussed: II. Concerning the existence, extent, and legal force of the general delegation of the parish priests of Brussels and its surrounding area. If we are to discuss this general delegation, the questions of the suitability, appropriateness, form, and legality of this general delegation must be entirely set aside; for all investigations pertaining to this would be a great undertaking, but outside the main issue, and would contribute nothing to resolving the principal question in this case, which is solely about the validity of the marriage of Joanna. Therefore, the entire question is reduced to this: 1. Whether there exists a certain mutual and general delegation of the parish priests of Brussels and its surrounding area, and that indeed with such an extent that even the case of Mr. Dhanis, according to the assumed hypothesis, is included; 2. Whether such a general delegation, in this case, possessed legal force, so that the Reverend Mr. Dhanis validly assisted in the marriage of Joanna. However, it is clearly evident from the records of the old and new process of Mechlin that a mutual general delegation of the parish priests of Brussels and its surrounding area existed at the time of the celebration of the marriage of Joanna, to the extent that no one of sound mind could doubt it, and furthermore, it is clearly demonstrated by the lengthy objection to this general delegation, made by the patron of the plaintiff. Therefore, let us not waste oil and effort, but let us inquire solely whether this general delegation was given with such an extent that even the case of Mr. Dhanis and Joanna is included. To this question, especially considering the records of the new process of Mechlin, the answer must be, without any doubt, that this case is included. Indeed, according to the printed form of this general delegation, only two cases appear to be included.

[*Latin ed. p. 602*]

602 WARSAW. Or, more precisely, "that betrothed persons, having been admitted to the betrothal, before contracting marriage, move away and present themselves to a different pastor, not their own; 2° that the betrothed, in order to avoid their own parish priest, establish a fictitious residence elsewhere, which is done before the marriage, and thus they circumvent their own pastor, and contract the marriage before him." There is not much to argue with the advocate of the actress, as to whether the case of Joanna at least does not fall under the second case mentioned above, since the favor granted to those who are the authors of their own errors, by the parish priest, is all the more to be vindicated for those who err in good faith. Certainly, the argument of the advocate to refute this assertion is completely irrelevant; for it is requested based on an example from a completely different matter. But this is unnecessary. For that delegation was legitimately extended beyond the terms expressly stated in the formula. Hence, the Archbishop of Mechlin, in a letter to the Archbishop of "Warsaw," testifies that the delegation included not only cases of deception, but also cases of error on the part of the parish priest.

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Furthermore, the Reverend Mr. Verstraelen, who has been in the sacred ministry in the suburban district of Brussels since 1851, and who has been the Dean of that district since 1873, answered the question: "Did the parish priests of Brussels and the suburbs, at the time when the marriage of Joanna and George was celebrated, understand the delegation printed [there] literally, or did they extend it beyond the cases designated?" He replied: "At that time, and almost from the beginning of the convention, the delegation was extended to all cases in which the purpose stated in the delegation was achieved, namely, to ensure that due care was taken regarding the validity of the marriage. This is confirmed by the testimonies of Mr. Verley and Mr. Laurey. From these testimonies of the best witnesses, to which the defender of the marriage bond of the court of Mechlin fully agrees, it has been amply demonstrated that, assuming the hypothesis of error on the part of Mr. Dhanis in the case of the marriage of Joanna, the case of the marriage celebrated by him is entirely included in the general delegation in question. And indeed, by the very nature of the matter, the validity of that general delegation must be admitted: for there is no intrinsic reason..."

[*Latin ed. p. 603*]

WARSAW. 603. Such delegations may be deemed absolutely impossible or perpetually scandalous, and therefore cannot be approved. Nor do the general principles of canon law regarding delegation stand in the way; for several ecclesiastical persons may be delegated in the same cause, jointly and severally, so that provision may be made against such eventualities. Cf. chap. 8, on the office and power of judicial delegation, T. 14 in Sext.; Schmalzgr. 1. I, vol. 28, no. 17. Nor does the special law of chap. Tametsi in the Council of Trent, Session XXIV, on the reform of marriage, stand in the way. Although, as is understood according to the common interpretation, cf. Schmalzgr. 1. IV, vol. 3, no. 187; Gasparri, De matrimon., no. 943, it is absolutely required that the delegate be a priest; nevertheless, the right of the parish priest or Ordinary to substitute another priest for himself, at least with regard to value, is not restricted by the Council of Trent, but is left within the terms of common law; therefore, since common law does not stand in the way, it is wrongly denied or restricted by the opinions of private doctors, the value of such a general delegation. Cf. Gasparri, loc. cit., no. 950, where he also does not admit other limitations of the law of Trent. Finally, the practice of the Sacred Congregation does not stand in the way of the value of a general delegation. For this, as a valid one, admitted that delegation in which the parish priest, in writing, granted permission to the contracting parties, specifically named, to celebrate the marriage before any priest, chosen at their discretion. Cf. Fagnan, in chap. 3, X, on clandestine marriages, no. 33; Gasparri, loc. cit., no. 949; Feye, De imped. et disp. matr., no. 297, 6. Certainly, a delegation more general "in respect of persons"

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cannot be conceived. Furthermore, the Sacred Congregation, in the case of Coloniensi (1), admitted general delegations as valid, and did not dare to pronounce a sentence of nullity, although it considered it appropriate to add some modifications to make those general delegations more suitable and lawful. How much the decision in the case of Coloniensi favors the validity of the delegations of Bruxellensium is best demonstrated by the conduct of the patron of the actress Joanna. He, faced with a difficulty arising from the decision in the case of Coloniensi against his (1) Recole, Vol. X, p. 641.

[*Latin ed. p. 604*]

604 WARSAW. The objections to the validity of the marriage seem to find no other way to be presented, except by, at least indirectly, impugning the decision given by the Sacred Congregation of the Council in the Cologne case, and by distorting the method added to the decision by the Sacred Congregation of the Council, in a completely absurd and perverse sense. In this way, anyone reading these arguments confesses, albeit unwillingly, that the decision of the Sacred Congregation of the Council in the Cologne case is contrary to his theories. Thus, we have arrived at the third and final point mentioned above, namely, that, besides the positive inquiry regarding special and general permission, the negative part of the examination of the arguments presented by the defender of the actress does not seem to be negligible. III. Regarding the arguments of the defender of the actress. Before discussing these arguments, it seems necessary to note one thing. Anyone who carefully examines the acts of this case, which preceded the first proposition, will be amazed that the entire matter, involving many facts and particular questions, was not prepared with a true and complete canonical process, at least an informative one. We have certain beginnings of a process in the Warsaw court, and we find a certain inquiry in the Mechlin court regarding certain questions; but a complete and perfect process does not exist, nor was it carried out in the place where it could have been properly and completely conducted, namely, in the archdiocese of Mechlin. This deficiency was made up for by extrajudicial information gathered by the defender of the actress, so that he, in a way, assumed the role of the instructor of the judge in the case; but there is nothing to be found of a true and proper judge, who, with a clerk present and a defender present, would conduct the entire process regarding the validity of the marriage. Therefore, the defender of the marriage, to whom the office of defending the marriage bond had been entrusted, rightly and with serious words, laments this deficiency. Hence, the wisdom of the Fathers of the Church led them to abstain from a definitive sentence based on a completely insufficient canonical process. And indeed, not even the defender of the actress

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himself...

[*Latin ed. p. 605*]

WARSAW. 605 denies that, in the new Mechlin process, the face of this case has changed significantly. If the advocate begins his argument by addressing certain difficulties, he insists on matters to which no one has seriously objected. Therefore, I readily agree with these arguments, and I do not question the conclusions drawn regarding the facts presented in the first part. Although the exception raised in the initial proposition of the case was not entirely unfounded, namely, that it does not necessarily follow from the judicial records that it applies in all cases, nevertheless, from the new Mechlin process, those facts are either expressly or implicitly confirmed, as is evident from what I have explained above concerning the specifics of the case. However, these concessions and confirmations do not benefit the advocate in favor of his case. For, immediately, he fails completely in proving the second part of his argument. There, he seeks to demonstrate with all his might that the Reverend Mr. Dhanis lacked a special delegation. But this assertion of the advocate rests on arguments that are either purely negative, such as the absence of a written delegation, which have absolutely no force, or, if they suggest something positive, they are completely undermined by the entire mass of presumptions that were previously discussed under the heading "of a special delegation," and which deprive all probability, or even certainty, with contrary arguments. Therefore, these arguments of the advocate are completely insufficient to declare the marriage null and void, and, assuming the existence of a special delegation, it is only out of abundance of caution that one should also inquire about a general delegation, which the advocate also attacks. And from the beginning, it must be noted that the esteemed advocate speaks broadly of the "Mechlin abuse" and presents the matter as if, throughout the entire Mechlin diocese, the parish priests generally delegate to one another. This is false, and it cannot be derived from the letter of the Archbishop of Mechlin. Certainly, in Brussels and in the suburbs of this city, and in other "parts" of the Mechlin diocese, the practice of mutual delegations is widespread, but it is not the case that, throughout the entire Mechlin diocese, all and every parish priest delegates to one another.

[*Latin ed. p. 606*]

VARSOVIA. They delegate. And these things seemed worthy of mention, lest confusion arise from ambiguous language, which it is better to avoid; and concerning the practice of Brussels, about which alone inquiry is made in this place, it is more fitting to consult with the defender of the bond of the Sacred Congregation of the Council. Furthermore, if the advocate of the actress rises up with great eloquence against the "Mechlin practice," perhaps the peaceful readers of this contentious discussion will somewhat smile,

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and it will be difficult for them to believe that the practice, which utterly destroys the entire machinery of the patron who impugns the value of the marriage bond, and which is a secure bulwark for the defender of the bond, is truly and properly called an "abuse." Finally, the practice of Brussels, about which the Holy Office has not yet pronounced any judgment, does not seem to deserve to be labeled an abuse, especially because this practice has been introduced by most esteemed clerics, and the present Primate who governs the Archdiocese of Mechlin, at the special request of the Most Holy Lord, prays that the "Mechlin practice" be approved. The arguments with which, subsequently, the most learned advocate impugns the practice of Brussels, suffer primarily from this most serious defect, that for precisely the same reasons, the practice of Cologne, also approved by the Sacred Congregation of the Council, could also be impugned. The Sacred Congregation of the Council never reprobated the practice of Cologne as invalid, but rather, with certain modifications, proposed it to the Archbishop of Posen, and also to the Archbishop of Camerano, as a norm. Furthermore, other arguments, which the most learned advocate urges from the very beginning, manifestly suffer from exaggeration, as if all discipline would collapse if those general delegations were admitted. These arguments of the advocate, if they prove anything at all, only serve to show that excessive delegations should be avoided; but they do not touch upon the value of the practice of Brussels. For where is there a delegation more general than in that case in which the choice of the priest is left to the judgment of the spouses, and yet the Sacred Congregation of the Council considered this delegation to be valid. Therefore, the practice of Brussels is surrounded by necessary precautions regarding its proper and licit use, but its va-

[*Latin ed. p. 607*]

WARSAW. 607 It is, therefore, all the more evident that the matter, just mentioned, which is a delegation, is subject to far greater limitations. With the best of intentions, the advocate then insists that the principle to be observed is not merely the letter, but the spirit of the law of Trent. However, this principle in no way leads to the conclusion intended by the advocate. For the principal purpose of the Council of Trent was to ensure that marriage be publicly celebrated; but if that public act could easily and frequently be challenged as invalid because of numerous and complex questions regarding domicile, which are increased in our age by constant migrations, the Trent Council's purpose of securing the validity and value of publicly celebrated marriage would easily be frustrated. Therefore, in those large states, the best course is to resort to mutual delegations, so that acts publicly and manifestly celebrated are not annulled with great scandal because of certain subtleties regarding domicile that are not understood by the people, as this very cause and the words of Mother Joanna demonstrate. If the advocate is surprised that this was denied in the Cologne case, he

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does not sufficiently consider that not all the words of Benedict XIV can be transferred to the Cologne practice, nor does he sufficiently attend to the Polish method of procedure, which Benedict XIV criticized, insofar as its effects differed from the Cologne practice, and even from the Brussels practice. In Poland, for example, I will mention only two distinctions, that any priests, or as they were called in the Middle Ages, "even the most foolish chaplains in castles," were delegated to assist in marriages without any prior banns. This is in no way done according to the Brussels and Cologne practices. Only the parish priests are delegated, a small number of very respectable men, to whom, in extraordinary cases, the first Vicar or Chaplain is substituted. For, as Feye states, 1, c. n. 297: "Certainly in Belgium, the vicars of the parish require the faculty obtained from the parish priest," that is to say, not all vicars of the parish indiscriminately are competent to assist in marriages by virtue of their office. And as I learned from the Reverend Father Gasparri...

[*Latin ed. p. 608*]

60. VARSOVIA. Even in Paris, that general faculty of assisting pertains only to the first parochial vicar. Furthermore, neither in Brussels nor in Cologne were banns ever arbitrarily omitted, contrary to Polish custom. But what is of the greatest importance is that the Polish practice, especially with regard to its effects, differs greatly from the practices of Brussels and Cologne. That Polish practice resulted in marriages frequently and easily being declared null. This is testified in clear terms by Pope Benedict XIV's Constitution "Nimiam licentiam," May 18, 1743, § 5, which was addressed to the Bishops of Poland. How great the abuses were in Poland can easily be inferred from another "Admonition to the Bishops in the Kingdom of Poland" from the same Pope Benedict XIV, "Matrimonii," April 11, 1741, where the following are read immediately at the beginning: "Although we are easily led to believe that such a license for the dissolution of marriages, by which one man or one woman, without serious offense to property, is seen to contract a third (!) or even a fourth (!) marriage, having previously been married to several spouses in turn, arises from the excessive freedom of your Courts, as we have learned happens elsewhere; nevertheless, we cannot refrain from bringing to you, Venerable Brothers, our just complaints, and at the same time, we consider how such excessive freedom should be restrained and kept within the limits prescribed by the Holy Catholic Church." Where ever were such Apostolic Letters written to the Archbishop of Cologne, in whose diocese the practice of delegated marriages directly from the patron had been in force since time immemorial? Did the Archbishop of Mechlin receive from the Apostolic See an "Admonition" regarding the "abuse of Mechlin," as did the Bishops of Poland? Never. The reason for this silence is easily understood. It is unheard of in those regions that anyone would contract a third or fourth marriage after

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easily dissolving previous marriages, because of the "abuse of Mechlin." The patron of the actress does not even...

[*Latin ed. p. 609*]

WARSAW. Indeed, it can present an example, and thus, through its own example, it demonstrates that mutual delegation is an obstacle to the easy dissolution of marriages. Those who defend [the case] then present arguments regarding the abuse in Mechlin, disseminated throughout the entire diocese, which are clearly based on a false premise, as was already refuted above, namely, that all and each of the pastors of the entire diocese had delegated [their authority] to one another. No greater force have the other arguments presented by Benedict XIV. For the words of Benedict XIV are taken from his own Constitution, "Nimiam licentiam," against the true abuse in Poland, which is entirely different from the practice in Mechlin, where not even the bishops easily and frequently delegated any priest, even without banns. The pastors of Brussels, moreover, since they all know the convention that was made, and they wish to safeguard the value of marriages as much as possible, certainly assist in each marriage with that authority which they have, whether it is their own or delegated. And if then the defender argues that delegation can only be general in nature, not in regard to persons, she establishes a canonical principle, gratuitously imposed, which has no basis in the nature of the matter, nor in common law, nor in special matrimonial law, nor in the practice of the Sacred Congregation of the Council, nor in the opinions of the doctors. And indeed, the passage from the decretals has already been cited above, which states that several judges in the same cause can be delegated in solidum, so that prevention may be provided. Furthermore, the Sacred Congregation of the Council has admitted as valid that most general delegation, in regard to persons, whereby the spouses themselves were permitted to choose a priest, and the defender of the bond, the Sacred Congregation of the Council, in its observations, challenges other decisions of the Sacred Congregation of the Council, in which this new and unheard-of theory of the actress is completely refuted. And those things which are presented from the authors are entirely irrelevant. For these authors present ordinary methods as examples, and therefore, they do not exclude other methods. Indeed, Feye himself, whom the defender lists among the supporters of her theory, in vol. 1, no. 297, mentions general delegations in Acta, vol. XXVIII, page CCCXXXIV, no. 39.

[*Latin ed. p. 610*]

610. VARSOVIA. Regarding matters concerning individuals, it considers them to be valid, so that the defender of the marriage bond of the Mechlinian Court, for example, includes among the authors of his observations, Mr. Dom. Feye, those who send a general delegation concerning individ-

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uals, even though they do not approve of such excessive generality. The advocate for the actress continues by stating that these general delegations are not to be admitted, because they are based on a reckless interpretation of the Council of Trent and introduce customs by which, according to Benedict XIV, the foundations of salutary ecclesiastical laws are undermined. However, the most distinguished advocate omitted one very important thing, namely, to prove these assertions with solid arguments. Furthermore, such assertions have already been sufficiently and completely refuted in the Cologne case, and have been entirely disapproved of by the decision given in that same case; for if they had any validity, they would even contradict the Cologne decision. Which is clearly impossible. And what he says about the undermining of ecclesiastical discipline by such a custom, he carelessly provokes against Benedict XIV. For Benedict XIV reproaches Polish abuses, which led to the easy and frequent dissolution of marriages, but the distinguished advocate specifically refers to the dissolution of marriage in which obtaining [a decree] is hindered by a general delegation. Furthermore, the custom that leads to the upholding of the value of marriages, which is not considered among the customs that undermine the strength of ecclesiastical discipline, by Benedict XIV. The advocate for the actress is not moved by examples from other regions, which were alleged in the Cologne case, since nothing is more easily spread than errors, and those examples do not possess any power of proof. Therefore, the advocate for the actress cannot find any other way to extricate herself, except by attacking the Cologne case. But first, his very response to the examples cited is a desperate evasion, which can be turned back against him. Indeed, errors and abuses are easily spread even in Catholic regions, where there are uneducated and negligent pastors, a poorly educated and dissolute clergy, and ignorant and corrupt faithful. But conversely, where there are learned—

[*Latin ed. p. 611*]

WARSAW. There are 611 bishops and very diligent ones who govern dioceses; well-instructed and zealous pastors exercise the care of souls; the faithful are rightly instructed and honest; therefore, it is certainly the case that the custom introduced is legitimate and honorable, not erroneous and shameful. Indeed, no one can deny that in the Archdioceses of Cologne, Cambray, and Mechlin, where this practice of general delegations was particularly prevalent, the best bishops, pastors, and faithful have always been present. Therefore, that assertion, that nothing is easier to spread than errors, is to be numbered among inept refuges of forensic eloquence in this case. If the proponent denies the force of the examples presented, I do not greatly linger on this question, since he does not bring forth solid arguments. Certainly, one example is beyond doubt, namely, that the Holy Congregation itself, in the case of Cologne, responded: that it does not

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follow that marriages contracted according to the practice of Cologne are null. These words clearly refer to past times and to marriages already contracted, not to future marriages and a new mode added by the Holy Congregation "in mind." Furthermore, the practice of Brussels, in substance, entirely agrees with the practice of Cologne, before that Holy Congregation was proposed; for it is a general delegation by reason of persons, - from which the proponent so strongly abhors - and furthermore, as it is evident from new acts from Mechlin, it did not extend beyond "casus strictae necessitatis" [cases of strict necessity]. Therefore, the same decision must be given in the case of Brussels as in the case of Cologne, namely, that it does not follow that marriages contracted according to the practice of Brussels are null, and consequently, in this specific case, it does not follow that the marriage of Joanna and George is null. Moreover, the proponent mentions the objection that in this controversy, the question of form is raised, not of substance, and therefore, in a contract valid by natural law, the form should be set aside, unless a defect is most clearly proven. Indeed, in our case, it is not a question of any...

[*Latin ed. p. 612*]

612 VARSOVIEN. The form is present, but of a substantial form. And although it may be lacking in its essential part, it does not render the contract, even a matrimonial one, null and void. In this matter, I have nothing to oppose to the most learned advocate. However, he is lacking in proof, that such an essential part of the form, namely the presence of the proper parish priest or one duly delegated in the marriage of Joanna, was absent. For it has been proven that there was no lack of a special delegation, nor even a general one, which was entirely sufficient for the validity of the marriage. Less clear and accurate are the arguments that the advocate himself proposes to remove the difficulty he has created. Indeed, in Christian spouses, a matrimonial contract cannot exist which is not also a sacrament. But if he goes so far as to assert that natural consent is lacking if the form is deficient, these statements are not accurate. For when, in the Council of Trent, the most serious men vehemently opposed the power of the Church to establish a certain solemn and substantial form in the celebration of a Christian marriage, the primary difficulty raised was that the Church lacked direct and immediate power over human acts. This reason seemed to many so firm, that they believed the Church could only invalidate marriages by rendering the contracting parties ineligible, but not by immediately annulling the matrimonial contract itself. However, there is no doubt that the Church has been able to use both methods in establishing the substantial form, and in fact has done so, as evidenced in chapter [reference missing]. Cf. Sánchez, *De Matrimonio*, Book III, dispute 4, paragraphs 1, 2, 3, 5. The author correctly responds to the difficulty raised in Book I, paragraph 10, to the third argument: "Although the Church does not have power over

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human acts, as regards the substance of the act elicited, that is, to cause the will to will or not to will, she does have power as regards their legitimacy, since she can, for just reasons, decree that such an act is not legitimate and valid. Therefore, the Church cannot, by its power, effect that, because of a mere defect in the form, natural consent, truly and properly given, is lacking, but it can only effect that natural consent..."

[*Latin ed. p. 613*]

WARSAW. 613 does not possess the juridical efficacy to produce the matrimonial bond. Therefore, the distinction between true natural consent, which, because of an impediment of ecclesiastical law, does not produce the effect of the matrimonial bond, and natural consent which is valid in itself and simultaneously effective and legitimate, must be maintained, so that a solid foundation may be had for explaining the healing of marriage at its root. Indeed, Feye rightly writes (1. c. n. 8, 2): "But when the impediment is of ecclesiastical law, the natural consent has no effect while it is given, but it can have an effect later, if it perseveres, when the impediment is removed by healing at the root." Cf. also Feye (1. c. n. 761, 766). Nevertheless, these things have been said in abundance. Such investigations, to which the advocate has resorted, do not seem to pertain to the matter. Then, the advocate attacks the arguments which were presented for the sake of utility, to prove the use of general delegations in regard to persons. In this matter, indeed, the most learned men, that is, those experienced in the care of souls of those great cities, ought to be heard first. Although the most distinguished advocate is a light and ornament to the lawyers in the City, in these matters, his own experience is lacking, and the peremptory judgment of three Archbishops, namely, Coloniensis, Cameracensis, and Mechliniensis, to which others could easily be added, hinders; the judgment and practice of the best pastors, the opinion and judgment of the most distinguished canonists, who have already been cited in the Cologne case, hinder. Hence, there can be no doubt that the presumption is very strong against the advocate. To this reason is added the fact that this very case of Joanna demonstrates to the eyes the utility of this practice in curtailing lawsuits and frivolous attacks on the matrimonial bond. Why does the advocate so vigorously attack general delegations in the parishes of Bruxellensibus? Because they eliminate all of his intention of obtaining the dissolution of Joanna's marriage; they curtail lawsuits and prevent declarations of nullity from being too easily obtained.

[*Latin ed. p. 614*]

614. WARSAW. For all those difficult questions concerning domicile or quasi-domicile in large states are easily resolved due to the increasingly frequent migrations, and the validity of marriages, arising from public cel-

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ebration, is established without difficulty. Therefore, it is not surprising that the Sacred Congregation, in its response of May 6, 1886, concerning North America, stated that residence for at least one full month is sufficient for one to be considered to have a quasi-domicile there in relation to marriage, "although an investigation must be made concerning the intention 'to remain for the greater part of the year'." Indeed, the fact of residence is merely external, public, and easily demonstrable; but that intention is much more difficult to prove, and consequently, it is more difficult to determine quasi-domicile. Thus, in our case, the fact of the public celebration of the marriage is easily established, and the validity of the marriage does not depend on difficult questions. If the defender argues that the practice of Brussels extends only to those who act in bad faith, and not to those who err in good faith, then his entire argument is based on a factual error. For, as the new laws of Mechlin show, the practice of Brussels extends even to those who have erred in good faith, as has already been demonstrated above through the allegation of the dispositions of the witnesses. In order to bolster his hopeless case, the defender of the actress finally resorted to the argument that the conditions required in the case of Cologne are lacking in the practice of Brussels. This argument of the defender suffers from a double and very serious flaw. For he does not sufficiently consider that the decision of Cologne has two parts: one referring to the past, and the other concerning the future. In the former part, it was declared that marriages celebrated according to that ancient practice of Aix-la-Chapelle and Cologne are not null. But that ancient practice of Aix-la-Chapelle and Cologne did not have all those conditions that are added in the second part of the decision in the case of Cologne, by the order of the Cardinals of the Sacred Congregation; and therefore, in substance, it was the same as the practice of...

[*Latin ed. p. 615*]

WARSAW. 615 Brussels. Therefore, the same decision must also be given regarding the marriage of Joanna with George, namely, that it does not consist of nullity. It is indeed absurd that a marriage celebrated in the year 1884 in a suburb of Brussels, by a general decree regarding persons from the year 1895 by the Sacred Congregation of the Council, should be declared null and void, when the same Sacred Congregation in the year 1893 declared that there was no proof of nullity in marriages which were contracted in the city of Aix-la-Chapelle, that is, in the very borders of Belgium, according to the same practice and under the same Tridentine law, which was in force there. Another error in the argument of the advocate consists in the fact that, without any solid foundation, he maintains that the conditions imposed by the Fathers in the "mind" for the future time are conditions absolutely necessary for the valid celebration of marriages according to the practice of Cologne, or that the "mind" itself should be considered as

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a clause rendering the marriage void. I would scarcely have believed that such an interpretation of that "mind" could be made, had I not seen it with my oown eyes. As already appears from the foregoing, this interpretation has no importance in defining the cause of the nullity of the marriage of Joanna, celebrated in the year 1884, for the law or clause rendering the marriage void, established in the year 1893, even generally for the entire Church, cannot affect the validity of a marriage contracted in the year 1884, when that clause did not yet exist. This being so obvious, it does not need to be proven with many arguments from the theory of the retroactive effect of laws. Furthermore, the assumption of the advocate is also completely false, if one were to examine even moderately the matter of Cologne. The entire decision rests on the distinction made between validity and licitness, and convenience. The question of validity is resolved by the first part of the decision; the question of licitness and convenience is ordered in the "mind." Moreover, the same result is achieved if one were to explain the words "mind." Immediately at the beginning of the "mind" it is stated: "Write to the Most Reverend Archbishop of Cologne, that in order to avoid inconveniences that may arise from the announced practice, it would be appropriate to adhere to it."

[*Latin ed. p. 616*]

616 VARSAVIEN. While transmitted by a theological consultant, namely, that the general delegation to parish priests is not a permission, etc." These words, e.g., "however it may arise," are so moderate that they do not suggest the impropriety of the previous practice, but rather, taking advantage of this opportune occasion, the Most Reverend Fathers seek to bring that practice into a greater and more perfect order. Furthermore, it is only a matter of permission in the exercise of the law, which parish priests can validly exercise on their enough. The word "iniungendum" (to be imposed) by the theological consultant was changed by the Most Reverend Fathers to the more benign word "optandum" (to be desired). No clause that is inherently objectionable appears in the entire context. But objections to actions are to be proven, not merely asserted. Therefore, if it has already been established that the clause appended by the Sacred Congregation of the Council in certain matrimonial cases: "prohibited from proceeding to other marriages without the permission of the Sacred Congregation," is simply a prohibition and not an objectionable precept, the same must be asserted about the "mente" (intention) in our case for the same and identical reason; for in both cases, there is no objectionable clause. Furthermore, this reasoning may be added. The Most Reverend Fathers have deigned to approve the method proposed by the theological consultant; therefore, that theological consultant appears to be an interpreter of that method who is not entirely to be disregarded. But he never intended to propose that method as an example of an objectionable clause. Hence, although he is well versed in

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the formulas by which nullity of acts is expressed in canon law, he carefully avoided using them. For his entire intention in proposing that method was to avoid excessive rigor and to properly order the entire matter. Above all, he took care that in the method adopted, not only would the authority of the Bishops be preserved, but rather increased. Therefore, since the words of the method do not contain any objection and have been approved by the Most Reverend Fathers, and in the case presented, have been softened rather than strictly applied, even according to the intention of the Most Reverend Fathers, that method appended does not have the force of an objectionable clause.

[*Latin ed. p. 617*]

WARSAW. 617 Finally, the advocate for the actress proceeds to the point that, even with the Mechlin custom taken into account, the nullity of the marriage of Joanna is established, because the marriage was celebrated even contrary to the Mechlin custom. This assertion rests entirely on the supposition that the Brussels practice did not extend to the case of error, which occurred in good faith on the part of the parish priest. But this supposition, as is clearly evident from the new Mechlin documents, is utterly false; therefore, the entire structure built upon this false foundation collapses. If the advocate for the actress wishes to suggest that the Reverend Mr. Dhanis was not in error, I do not contradict him; but he fails to consider that, from this, two conclusions necessarily follow: either the Reverend Mr. Dhanis acted, according to the very Brussels practice, illicitly, which is entirely unthinkable for a priest so upright and prudent; or, with special permission given verbally by the Reverend Mr. Saegher, the marriage of Joanna took place, as all the presumptions mentioned above demonstrate. Therefore, after carefully examining all the documents, facts, and laws, the defender of the validity of the marriage rightly concludes in the Mechlin court: "There is no basis for doubt regarding the validity of the marriage of the spouses Joanna and George; and if anyone were to claim that there is such a doubt, it must always be maintained that, in the presence of doubt, one must adhere to the validity of the act, and nullity cannot be declared unless there is the same moral certainty, which is certainly lacking in this case." Therefore, regarding the agreement on the doubt: "Does it appear that the marriage is null in this case?", I believe it must be answered: "No." With these premises, the purpose was to resolve the doubt: "Does it appear that the marriage is null in this case?" RESOLUTION. The Holy Congregation of the Council, after deliberation on December 1, 1895, decided to respond: "No."

[*Latin ed. p. 618*]

618. VARSAVIA. From which [sources] one may gather: I. That the Council of Trent, in its Decree concerning Reforms, Session XXIV, Chapter 1,

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intended to promote the valid celebration of marriages by establishing a new, substantial form, by which it would be publicly and externally evident that a marriage had been celebrated. II. That such a public form of celebration was established because clandestine marriages, due to human weakness, gave rise to grave sins; for it often happened that many, having secretly contracted marriage with one spouse, would openly take another, and live in perpetual adultery with her. III. Therefore, if the fact of the celebration of a marriage is publicly and externally evident, its validity cannot easily be undermined by the subtleties and arguments of those who are interested in its nullification, so that no one may renounce it. IV. Those who oppose the validity of a marriage are obligated to present certain and undeniable arguments, by which it is demonstrated that a cause for nullity existed; for example, if the parish priest was absent, or if another, acting under his delegated jurisdiction, did not properly celebrate the marriage. V. It has not been established that the minister of the Church, assisting at the marriage, lacked the jurisdiction conferred upon him by a particular or general delegation, whether in writing or orally; therefore, it has been determined that there is no reason to declare the marriage null. VI. Moral certainty, which is necessary to pronounce a judgment, can arise even from conjectures, presumptions, indications, and any circumstances whatsoever, provided that it arises from the totality of the circumstances. VII. The right of the parish priest, or of another Ordinary, to substitute another priest for him, at least with regard to validity, remains according to the terms of the common law, as established by the Council of Trent; from which no obstacle is prepared.

[*Latin ed. p. 619*]

WARSAW. OBSERVATIONS ON THE SUPPLICATION OF THE ARCHBISHOP OF MECHLIN REGARDING THE APPROVAL OF THE PRACTICE OF GENERAL DELEGATIONS THERE. In this practice, two questions appear to require careful distinction: one, which pertains to the form of granting general delegations; the other, which pertains to the scope within which those delegations are to be approved.

I. The form of a general delegation can be twofold.

a) Indeed, this type of delegation is closely related to a true and properly called convention of pastors, whereby other pastors and their ordinary coadjutors are delegated in cases expressly specified by the formula, and this convention is accompanied by the approval of the Ordinary. This approval of the Ordinary can be a mere confirmation of the convention in a common form, and does not, by itself, imply any delegation of individual pastors or coadjutors by the Bishop.

b) Another form of general delegations can be introduced in such a way that pastors of the same city, perhaps by common agreement, submit a supplication to the Ordinary of that place, so that he may generally delegate all

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and each of the pastors of that city by an episcopal ordinance or law, and also grant the power to delegate another priest. In this episcopal ordinance, the cases to which the general delegation of pastors extends are accurately defined, or the entire scope is well circumscribed.

c) This third form, as is evident, was adopted by the Sacred Congregation of the Council in the case of Cologne, and undoubtedly appears to be entirely preferable to the first form adopted in the practice of Mechlin.

d) Therefore, it seems that it should first be established that pastors, even in larger cities, should simply be prohibited from mutual and general delegations concerning marriage without consulting the Ordinary of that place and without his express approval. For such a matter appears to be a matter of greater importance to the diocese, and therefore, without the intervention of the Bishop, it cannot be resolved by the private authority of the pastors.

[*Latin ed. p. 620*]

620 WARSAW. e) This prohibition does not seem to be able to be given in the form of a law that renders null and void, but simply as a prohibition. For otherwise, a certain new impediment would be introduced, or the Tridentine law, which renders null and void clandestine marriages, would be extended to cases which, up to now, have not been included within the scope of Tridentine law with regard to the validity of acts, as is clear from the text of the Council of Trent and from the decisions of the Sacred Congregation of the Council in the case of Cologne, in which the Sacred Congregation did not declare certain delegations to be invalid, but did not declare them to be valid. In our time, there seems to be no reason to move from a milder practice to a greater strictness. Certainly, in the Vatican Council, all the requests of the Bishops were directed towards reducing the impediments to marriage, and in particular, several Bishops, due to modern difficulties regarding domicile, requested at least a modification of the impediment of clandestinity. Finally, it should also be noted that the Sacred Congregation of the Council is not competent, without special approval from the Most Holy Lord, to give such an expansive interpretation of the Council of Trent, or to establish a new law that renders null and void. The purpose of the Council of Trent does not require such an extension, since it is always easily determined by a truly public act of the fact of the celebration of the marriage. f) Furthermore, the convention itself seems to be a less suitable form for introducing such a delegation. For, as can be seen from the case of Brussels, such conventions can easily be restricted or extended by the parish priests in practice, and thus arises a legal uncertainty which should be avoided above all. Moreover, it is possible that a new parish priest will not grant the delegation, or will stubbornly limit it. In this case, many inconveniences arise again, and many cases remain uncertain. g) Therefore, a delegation granted by the Bishop's ordination,

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with the power to delegate further, is entirely preferable. In this way, the parish priests are delegated by law, or by the law itself; but the law is much more stable and certain than a convention. Moreover, if the Bishop grants the power to delegate further, on the one hand, the parish priests are not uselessly restricted to their coadjutors, and on the other hand, the delegation is not extended beyond the necessary limits. For even in Belgium, in commonly occurring circumstances, the parish priest usually assists at marriages, and only the parochial vicars do so by a special delegation from the parish priest. There appears to be no reason why the praiseworthy practice of Belgium should be extended too much.

[*Latin ed. p. 621*]

I. Concerning the alteration of the duties of parochial vicars. II. a) Regarding the scope of the delegation to be approved in the Mechlin diocese, certainly nothing prevents it from being approved in the same manner as in the archdioceses of Cologne and Cambray. For, at least, the same reasons apply in favor of the Mechlin archdiocese. b) However, in the petition of the Most Reverend Archbishop of Mechlin, the approval of a general delegation beyond the limits admitted in the Cologne case is clearly requested. And it cannot be denied that the Sacred Congregation, in the Cambray archdiocese, where a similar practice of delegation was in force to a much greater extent than in Cologne, transmitted a decision in the Cologne case. c) Nevertheless, it is certainly true that that delegation can be granted beyond the limits admitted in the Cologne case, if special circumstances warrant it. Indeed, it must be admitted that the circumstances in Belgium are more difficult, the people suffering confusion due to the various civil and canonical jurisdictions. In Antwerp and Brussels, many marriages are contracted either invalidly or, in the canonical form and before the Church, not at all, without such a broader delegation. Conclusion. Therefore, concerning the form, it seems preferable, even for the Mechlin archdiocese, the Cologne form, namely, not through a convention of the pastors, but through an order of the Bishop, that this matter of delegations be defined. Concerning the scope of the delegations, considering the special circumstances, it seems that approval can be given to the Mechlin practice, provided that the Most Reverend Archbishop, in his order for the larger cities only, accurately defines the scope of the delegation according to the terms of the petition, and expressly prohibits the pastors from extending the delegations arbitrarily and illicitly beyond cases of necessity, as established in the order.

[*Latin ed. p. 622*]

622 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULARS OF NANCY. DECREE OF EXEMPTION, March 27, 1896. SUMMARY OF FACTS. To restore fallen young women to the path of virtue

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and to protect those in danger, Rosa Virginia Pelletier, later known as Sister Mary of Saint Euphrasia, founded the Congregation of Sisters with simple vows, called the Good Shepherd, in the year 1835, with a Mother House in the city of Angers. This Institute, dependent on a General Superior, residing in the aforementioned Mother House, and which possessed Constitutions approved by the Holy Congregation of Bishops and Regulars, flourished and expanded rapidly throughout the world, thanks to the work and zeal, especially, of the pious Foundress, who held the office of General Superior until the year 1868, when she passed away. Among the houses that deserved the special attention of the pious Foundress, that which was established in the city of Nancy since the year 1835 certainly stands out. For, overcoming the opposition of the local ecclesiastical authority, which insisted on its dependence on the Mother House in Angers, and other difficulties encountered everywhere, with God's help, it grew so prosperously that, in recent times, it was necessary to expand the building with new constructions. These new works provided the current Bishop of Nancy with the opportunity to issue three decrees against the aforementioned sisters: in the first of these, dated February 19, 1894, the Bishop ordered the suspension of the works, and commanded the sisters to present both a graphic plan of the new constructions, and the accounting books of the house, showing the revenues and expenses incurred in the aforementioned works, and then to submit a signed document from the local Superior, and approved by the General Superior, in which should be indicated:

[*Latin ed. p. 623*]

NANCY. On the 623rd day, the sum of money to be given to the girls leaving the institution, along with their belongings, was to be delivered. In two other decrees, dated March 19th of the following year, the Bishop, adhering to the Constitution *Inscrutabili* of Gregory XV, dated 1622, and to the diocesan statutes concerning religious congregations of women, obligated the aforementioned Superior to submit to a Commission appointed by the Bishop, for examination, the administration books, registers, and accounting books; and furthermore, to present within five days a list of the girls who entered and left from January 1st, 1893, and to state the sum of money that these girls received upon their departure. Against this manner of acting by the Bishop, the Sisters presented complaints to the Holy Congregation through their Defender, alleging that the Bishop was already aware of the new constructions and expenses incurred, and that the purpose of this demand or harassment was to impose a new obligation upon the Sisters, namely, to compel them to leave a certain sum of money to the penitent girls leaving the institution, an obligation which, without serious prejudice, indeed ruin, the Congregation could not assume. This recourse was examined and voted upon by the Bishop of Nancy, who, in the afore-

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mentioned proceedings on March 31st, 1894, presented further arguments against the Sisters, especially that the Sisters were squandering the funds of the Congregation, since while the Superior had declared that the sum of 160,000 livres was sufficient for the new constructions, the documents showed that expenses of 300,000 livres had actually been incurred; and meanwhile, the Bishop maintained in these proceedings that alms were being denied to the poor, that no sum of money was given to the girls leaving for their proper placement, and that the institution was focused solely on accumulating money, rather than on piety and the moral education of the girls. After receiving these proceedings and carefully considering the matters, the Holy Congregation issued the following decree on April 27th, 1894: "It is written to the Bishop of Nancy: the intention is..." Regarding the obligation imposed upon the nuns to present the administration books to the Ordinary, it cannot be stated that the aforementioned nuns are bound.

[*Latin ed. p. 624*]

624 NANGEYEN. In order to present such books, it is done according to the fact that each Monastery, each year, submits general accounts to the Superior General, which, after being approved by the Ordinary of the principal house, are transmitted, at set times, by the aforementioned Constitutions to the Sacred Congregation of Bishops and Regular Canons. However, the Bishop cannot grant the removal of the Superior of the Monastery of Nangeyen, nor the Provincial Superior, because, when the matter concerns the internal administration, it is not permissible to proceed with the requested removal without a formal investigation into their manner of acting. Nor is it to be considered otherwise regarding the obligation imposed on the nuns, namely, to hand over a certain sum of money with their belongings to orphans and other girls leaving the Monastery; for this concerns a burden to which they cannot be obligated, since they are not bound by it, neither by Constitutions nor by custom. "Having received the report, the Bishop did not agree, but insisted that, according to the aforementioned Gregorian Bull and other decisions, the questions already resolved by said report should be brought up again in the general Congregation; he particularly challenged the denial of his right to be shown the administrative books by the sisters, and the newly introduced practice which causes more inconveniences: Regarding the assignment or dowry to be given to the girls leaving, the Bishop stated that this is not only required by the principles of Christian charity, but by justice itself. Having considered these observations, the Sacred Congregation decided to address the Bishop's conduct regarding the proposal of the case in the general assembly through the following report: "Concerning the presentation of administrative books and the submission of accounts, the practice is as follows: that each Superior must submit the accounts of her respective house each year only to the Superior General; which, after being approved by the Ordinary of

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the principal house, must be transmitted to this Sacred Congregation of Bishops and Regular Canons every three years; and that neither examples nor authorities can invalidate or change this practice."

[*Latin ed. p. 625*]

TO THE MOST REVEREND CARDINAL. 625. Having considered the matter, I find that this concerns monasteries of women taking solemn vows, which are autonomous and independent of each other; it does not concern more recent institutions, which have a general superior and a motherhouse. Regarding these institutions, as the Sacred Congregation communicated to you in a letter of May 6th, the following has been determined: For the reasons mentioned in the previous letter, the Sacred Congregation cannot accept the principle advocated by your Eminence, namely, that nuns of Fains and other young women about to leave the pious house should be given a sum of money as a dowry. For if such a principle were accepted, all young women would presume to claim such a right. However, if your Eminence does not find these arguments persuasive and persists in your proposal, as expressed in a letter of June 8th, that the matter should be discussed in a general assembly of the Fathers, "it will be necessary for the Sacred Congregation to inform you of the consequences."

SYNOPTIC ACCOUNT OF THE BISHOP'S DEFENSE. The Bishop divides his argument into three parts. In the first part, he argues that institutions of women taking simple vows have always been subject to the local bishop in which they are located, even with regard to the administration of goods. He distinguishes two periods, namely, before and after the French Revolution: Regarding the first period, he notes that, according to the Constitution *Circa Pastoralis* of St. Pius V, these institutions should have been suppressed, but in fact they were tolerated, with the condition of full dependence on the local bishops, even with regard to internal governance, as if they were diocesan institutions. He cites *Instit. eccl.* XXIX, no. 13, of Benedict XIV, and the celebrated Bull *Quamvis Iusto*, in which it is clearly stated regarding English virgins in institutions of simple vows that "they are subject to the jurisdiction of the Ordinary Bishops, in whose dioceses they are." These expressions, he argues, imply a right of the bishop to oversee the administration of goods, as also stated in *Reiffestuel, Jus canon. univ.*, Act, Vol. XXVIII, p. 334.

[*Latin ed. p. 626*]

626 NANGEYEN. Book III, chapter 36, paragraph 5, and Fagliano in chapter 4 concerning religious houses, paragraph 31, but also supports this with the fact that a Bishop possesses this right even with regard to institutions exempt from his jurisdiction, according to the decrees of the Council of Trent, in session 22, chapter 9 concerning reforms, and by the Gregorian Bull *Inscrutabili*. This can be repeated from the fact that these

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institutions did not have a general superior, for, setting aside other examples to refute this, the author presents the example of a recently established institute of Anglican Virgins, which, although having a general superior, nevertheless, notwithstanding this, the Pontiff expressly declares in the aforementioned Bull that the jurisdiction of the Bishops over individual houses has in no way been diminished. Afterwards, the author, moving to the second epoch, namely after the French Revolution, observes that the Holy See has always proceeded with caution and hesitation in the approval of institutes of simple vows, and in the granting of a general superior, and that when this was done, it has always wished to preserve the full right of local Bishops concerning vigilance in the administration of the institute's assets and concerning the institute's subjection to their jurisdiction. He proves this with the authority of Lucidi concerning the visitation of Holy Places, volume 2, chapter 5, article 4, paragraphs 355 and 360, and cites various examples from which it is clear that the decree of praise or the approval of a new institute was made with the clause: "saving in every way the jurisdiction of local superiors." This clause was included in the approval of the Institute of the Good Shepherd, and then this institute's internal constitution was adopted and promulgated by the Holy See as an example of subjection to the local Ordinaries for other institutes, as can be gathered from Bizzarri's Collection, page 776. Indeed, the author adds, in the approval of some institutes, as in that of the Daughters of St. Anne, it was expressly added that the *tutelae* which the Holy Canons grant to Bishops over the temporal goods of the respective houses was in no way diminished. Therefore, the author concludes, the principle admitted by the Holy See is this:

[*Latin ed. p. 627*]

NANGEYEN. It is asserted that in the year 627, an attempt was made to exclude the Bishop of the Mother House from any influence in the institutions of other dioceses, and to reserve for him only the presidency in general chapters. To demonstrate the subjection of the respective houses to the local bishops with regard to the administration of goods, several canonists are cited (Lucidi I, op. cit., art. 6, § 428-29; Santi, Praelectiones iuris canonici, ad tit. $6 Hb. HU D Angelis, etc.), who contend that no example can be found of any restriction of the authority of the local bishop concerning these institutions. On the contrary, it is argued that from the recent approval of a certain institute, and from the most recent decision of the Sacred Congregation for Extraordinary Affairs, approved by the Holy Father, the principle of the dependence of the institutes of simple vows on the local ordinaries has been entirely established. From this, it is inferred that the practice invoked in the report of the Sacred Congregation dated May 5, 1894, should be considered as new and recently introduced, and therefore should be rejected. In the second part of his argument, the defend-

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ing bishop points out the inconveniences arising from the aforementioned rescript, and the precautions or restraints contained therein; namely, the intervention of the Bishop of the Mother House and the triennial approval of the Sacred Congregation, which entirely fail to provide sufficient safeguards. Indeed, since the respective houses are very distant, and are subject to the Bishop of the Mother House and, by a greater right, to the Sacred Congregation, this distance makes it impossible to prevent, detect, or correct abuses in the administration, whether concerning ordinary expenses within the year, or extraordinary expenses; and even if detected, to punish those responsible: for this would require the presence of the Bishop of the Mother House in the respective institutions, which is impossible. Therefore, it is necessary that the administration of the individual houses be entrusted to the local bishops. Furthermore, it is argued that the Bishop of the Mother House could prevent these abuses by using the services of the local bishops; but the defender maintains that this system would be too lengthy and unsuitable for the local bishops; and then, in the aforementioned hypothesis, either the Bishop of the Mother House...

[*Latin ed. p. 628*]

628 NANCY. The Mother follows the opinion of the other Bishops, and then it is the same as leaving the protection of the houses in their hands, or if she does not follow, then disputes and discord must necessarily arise. Finally, the defender refutes, supported by the authority of Lucidi, mentioned above, the objection, namely that the dependence of individual houses on the local Bishops in the administration of goods undermines the unity of the Institute, and he enumerates the rights that he derives from the defense of episcopal protection. Arriving at the third and final part of his argument, the defender argues that the Institute of the Good Shepherd in the city of Nancy is obligated to place the young women who leave it honorably and to provide them with appropriate furnishings along with a specified sum of money. Regarding the first point, he states clearly that this is evident from the Constitutions of the Institute, where it is stated that the young women who leave either are given into the hands of their parents, or are placed honorably, or are joined in marriage when a suitable opportunity presents itself. Regarding the second point, the defender maintains that the Institute is obligated to provide the young women with a sum of money along with appropriate furnishings on three grounds: 1° on the ground of Christian charity, which requires that assistance be given to young women in their need; 2° on the ground of just wages, since whatever the Nancy Institute gains comes from the labor of the young women received into its care; 3° because of the custom in force within the Institute, according to the testimony of the General Superior, from which the Nancy Community cannot certainly be exempted, which spends lavishly on splendid buildings more than five hundred thousand

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livres. THE RIGHTS OF THE SISTERS OF THE GOOD SHEPHERD. On the contrary, the Sisters vigorously oppose the claims of the opposing party, maintaining that they are neither subject to the diocesan Ordinary with regard to the administration of goods, nor are they obligated to place the young women who leave them honorably and to provide them with appropriate furnishings along with a specified sum of money. And regarding the first point, they reject the equivocation into which, they say, the opposing party has fallen, by applying

[*Latin ed. p. 629*]

In Nancy, the institutes of simple vows are subject to those legal provisions which are expressly established for nuns taking solemn vows and those subject to papal enclosure; and this difference between a simple religious and a nun is so evident that even the unlearned cannot fail to perceive it. And indeed, the Sisters ask, if the nature of these two entities is considered, it quickly becomes apparent that there is a great difference between them. Nuns, bound by solemn vows, are strictly subject to the religious state, have the rules of the ancient Orders, are subject to the rigor of the canons concerning the renunciation of property and papal enclosure, and participate, according to their capacity, in the privileges of religious Orders. On the contrary, Sisters taking simple vows, being governed by a new law, are subject to the ancient rigor of the canons only in part; hence they retain the original ownership of goods, are subject only to episcopal enclosure, and are subject only passively to the ordinary, and have a general administration: and although since the middle of the century they have had apostolic approval in a simply common form and are under the direct protection of the Holy See, nevertheless, due to their incomplete nature with regard to the religious state, they cannot participate in the privileges granted to religious Orders by law. From the foregoing, they deduce that the texts of law cited above, expressly issued for nuns taking solemn vows, cannot be applied to institutes of simple vows, lest a corruption of the law occur. And they confirm that these texts do not apply to institutes of simple vows, first, from the impossibility on the part of the Holy See of issuing such acts for these institutes; second, from the final cause which determined these provisions; and third, from the incompatibility of the prescriptions with the dominant power of these institutes. Explaining the first point, they cite the Bull of Gregory XV, *Inscrutabili*, dated February 5, 1622, and point out that in it, no distinction is made between institutes of the first kind and communities of simple vows.

[*Latin ed. p. 630*]

630 F \A\ OEYE.\\ This, with the General Superior, ought also to apply to this [case]; the Sisters maintain that this distinction could not be made for the simple reason that the aforementioned Community did not then

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exist. The older Institution of simple vows is that of the daughters of St. Vincent de Paul, approved by Bishops in the year 1633 and recognized by Clement X in the year 1668. But, granted and conceded that such Institutions existed even then, the aforementioned Bull cannot be extended to them, because the Bull, speaking of one Institution, evidently excludes another of a different nature, and what is known by one cannot be applied to another. Furthermore, the Sisters note that the Holy See, in the approval of the Constitutions of Institutions of simple vows, has always, until the middle of this century, appended the clause: "We do not, however, intend to approve the Conservatorium." Indeed, as testified by Benedict XIV, this clause always refers to the conservatorium or the monastery of women living without enclosure; therefore, unless it is absurd, the Gregorian Bull, whose purpose was to provide the most diligent custody of enclosure, according to the prescriptions of Boniface VIII, the Council of Trent, and the Constitutions of St. Pius V concerning Pastoral matters, cannot be invoked for monasteries of women living without enclosure. And that the Pope intended only to provide for the custody of enclosure is evident from the initial words of the Bull, which state that "the monasteries of sacred virgins must be diligently guarded," from the reform of those dispositions which refer to enclosure, such as those concerning confessors, the administration of goods, elections, from the insertion of decrees of the Council of Trent concerning nuns, and finally, from the presence of a Regular Prelate in the rendering of accounts of the administration to the local Bishops. Indeed, the Sisters do not enjoy the exemption of Regular Canons, they do not have papal enclosure, they do not have Regular Prelates, and therefore the aforementioned Bull cannot apply to them. Nor is it valid to argue that, just as the application of the Bull with regard to the rendering of accounts to local Bishops is useful for nuns, so it would be useful for the Sisters.

[*Latin ed. p. 631*]

NANÇY. 631. For since, after the approval by the Bishop, the houses of the Motherhouse are obligated to present to the Holy Congregation an accounting of their administration, which has been approved, it would be greatly hindered in its administration if, subsequently, these houses were subjected to the revision of local ordinaries, given the possibility of differing judgments regarding the approval; and thus, they would suffer a most grievous burden. Therefore, justly, the Sisters conclude that the Holy Congregation wrote to the Bishop of Nancy: "This burden cannot be imposed upon the Sisters." For otherwise, the new law concerning Institutes of simple vows would have to be revoked; for through this law, the power of governance or the administration of temporal goods, which, by its nature, pertains to the Community, is one of the vital functions of the Institute itself, and is transferred by canonical election to the Superior General, and this power cannot be taken away without destroying the nature of

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the Institute. Therefore, although in the Apostolic approval of the Constitutions, it is added: "with due regard for the jurisdiction of the Ordinaries, according to the holy canons," this does not restrict the power of the Superior General, since jurisdictional power differs entirely from governing power, the former concerning spiritual matters and the latter concerning temporal matters or the administration of goods; which is confirmed by the declaration of the Holy Congregation, where the words concerning monasteries of nuns – "which are governed by the Bishops as delegates of the Holy See" – are to be understood concerning spiritual governance and not temporal governance. With this established, the Sisters ask, the administration of goods in Institutes of simple vows, which pertains to the governing power of the Superior General, must it not be free and perfect, otherwise it would not achieve its purpose. But if this administration were subjected to the prescriptions of the Bull 'Inscrutabili' or to the revision of local Bishops, the governing power of the Superior General would almost vanish. 1° Because there would be as many administrations independent of her as there are houses subject to the local Bishops, namely, 160 or 180 out of 200 foundations. 2° Because the Superior would be prevented from disposing of the goods of one Community for the benefit of another.

[*Latin ed. p. 632*]

632 NANCY-TOUL. or for the general good of the Institute concerning new foundations; for local bishops could order that revenues not leave the respective community. Having reached this point through prayer, the Sisters state that the opponent's argument is now completely refuted, since the foundation upon which it was built has been demolished, namely, the application of the *Bulla Inscrutabili*; nevertheless, they also respond to other legal arguments presented by him. Regarding the *Bulla Quamvis Iusto*, they assert that, from the very rubric, it is clear that it was issued specifically for the English Virgins, and therefore cannot be applied to Institutes of simple vows in general. And although Lucidi, in the cited work, volume 2, page 274, presents it as a foundation upon which other Institutes can build the entire edifice of religious governance, nevertheless, on page 327 of the same work, he adds that the Most Holy Pope Pius IX intended to derogate from this prescription – and in fact, the Holy See has, for many years, refrained from imposing the aforementioned dependency, and indeed, in the recent approval, through the organ of the Sacred Congregation for the Propagation of the Faith, granted to the Constitutions of the English Virgins, all such dependency was definitively suppressed, which is now claimed by the Bishop of Nancy-Toul. Regarding the texts presented by the opponent, the Sisters observe that the *Constitutio Ciernentinae* from the Council of Trent, chapter 8, session 22, and Fagnani, in chapter 4 on Regular Canons, state that these texts are expressly referred to hospitals and pious institutions, and are probably absolutely inapplicable even to

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Regular Canons, with the exception in the aforementioned Clementine documents – and furthermore, we do not intend to extend the aforementioned to hospitals of military orders or religious orders. Using the same reasoning, they maintain that the decisions of the Holy Congregation, which the opponent presents, should be considered, because, as he himself admits, they are based on the *Bulla Inscrutabili*, which, as explained above, is not applicable to Institutes of simple vows. Finally, regarding the authorities of Doctors, the Sisters reproach the opponent for, while claiming to be impartial, citing only those opinions that favor his false application of the repeatedly mentioned *Bulla*, and remaining silent about those that are contrary to his thesis.

[*Latin ed. p. 633*]

NANCY-TOUL, 633 After these matters, the Sisters proceed to another question, and, having completely rejected the accusations made against them, which are based on witnesses or suspects, or on those who collude and are therefore not worthy of any credence, they vigorously defend themselves against the claim that young women leaving the Institute are not properly placed, nor are they provided with the necessary provisions and a determined sum of money.

1. They state that they are not bound by the title of charity, because the duty of charity, according to their Institute, consists only in receiving young women as guests, and those who are received as guests are called "guests." From this charitable duty, no other obligation can arise; "just as pious persons who give alms cannot be compelled, after having given alms, to honestly provide for the poor who have received them, and just as hospitals, when dismissing convalescent patients, cannot be compelled, upon their departure from the infirmary, to give them money with appropriate provisions, or to secure suitable employment."

2. Furthermore, they state that they cannot be bound by Constitutions, whether old or new, because these prescribe nothing regarding this order of charity. Indeed, this new obligation would be entirely incompatible with the status of the Institute, which in the year 1893 counted more than 35,885 people and 182 communities distributed throughout almost the entire world in 29 Provinces. For, although, considering the prudence of the Superiors in the respective houses, sufficient revenues are available for their maintenance, nevertheless, if consideration were also to be given to the honest placement of the young women received, who in the year 1893 numbered 20,000, it is clear that the economic situation of the Institute would quickly lead to ruin.

Having briefly presented these points, the following questions were to be clarified:

Question I. To what extent must the Community of the Good Shepherd of Nancy-Toul be subject to the Diocesan Ordinary with regard to the ad-

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ministration of its assets?

[*Latin ed. p. 634*]

654 NANCY. T. II. Concerning the Sisters of the Institute of the Good Shepherd in Nancy: How and in what manner are the Sisters of the Institute of the Good Shepherd in Nancy obligated to honestly place the girls who depart from the Conservatory, and to give them a sum of money proportionate to their possessions?

RESOLUTION. The Holy Congregation of Bishops and Regulars, after deliberation on March 27, 1896, responded: To I. Negatively in all respects. To II. They are not obligated.

FROM WHICH WE GATHER:

I. There is a significant difference between Religious Sisters who have taken solemn vows and the recently established Institute of Sisters who have taken simple vows. The former strictly belong to the religious state, are subject to the rigor of the sacred canons, both concerning the renunciation of property and concerning the observance of papal enclosure; they form houses that are autonomous and independent among themselves, and participate, according to their capacity, in the privileges of strictly regular orders. On the contrary, the latter, in a broad sense, belong to the religious state, retain the radical ownership of goods, are subject only to the enclosure of the bishop, and only passively to the ordinary; they have a general administration, and do not, by themselves, participate in the privileges of regular orders.

II. Therefore, it follows that the legal provisions established for Institutes of Religious Sisters who have taken solemn vows are not always applicable to Institutes of Religious Sisters who have taken simple vows, since these are two entities of a different nature. Indeed, the Constitution *Inscrutabili*, whether considered from the time it was issued, or from its purpose, or from the citations contained therein, was evidently intended only for Religious Sisters who have taken solemn vows, and it could only be invoked for the Institute of the Good Shepherd unjustly.

III. Given the different nature of these Institutes, it is necessary that they be governed by different laws: therefore, just as Religious Sisters who have taken solemn vows are subject to the rigor of the sacred canons, so for Institutes of Religious Sisters who have taken simple vows, this rigor is relaxed, and a new law is introduced. Administrators of goods. Religious Sisters who have taken solemn vows are obligated to render an account annually to the local Bishops with the intervention of a Regular Prelate; on the other hand, the respective Institutes of Religious Sisters who have taken

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simple vows do not render an account of the administration.

[*Latin ed. p. 635*]

NANCY. To the local bishops, but the ultimate authority, which subsequently submits it for approval to the Ordinary of the Mother House, it must be transmitted every three years to the Holy See: and this derives from the dominical power, one of the most important functions of these Institutes, reserved to the Generalate, and the governance of the aforementioned Superior; and although the sisters are subject to the local Ordinaries with regard to jurisdiction, they are nevertheless exempt with regard to the administration of goods, the governance of houses, and internal direction. It is necessary here to refer to something (from the *Collectanea* of Bizzarri, for the use of the Sacred Congregation for Eastern Churches and Regular Canons, edition of 1863) which established a new law concerning the exemption of institutes of simple vows from the jurisdiction of the Ordinaries, with regard to the administration of their own goods. Pope Innocent X, in the Brief *Commissi Nobis*, dated July 30, 1647, concerning the clergy of the Christian Doctrine, among the privileges granted to them, and which was communicated to the Congregation of the Most Holy Redeemer, decreed: "With regard to the temporal administration of goods, the governance of houses, the election of Superiors, etc., the Ordinaries may hitherto intervene or execute decrees... except in cases permitted by law" (op. cit., page 477). The cases permitted by law, as the aforementioned author states in the notes, are those designated by the Council of Trent, Session 6, chapter 7; Session 7, chapter 14; Session 13, chapters 1 and 5; and Session 25, number 2. Pope Benedict XIV, in the Brief *Emanavit*, dated 1758, confirmed the resolution issued by a commission of Cardinals, appointed by him to resolve certain controversies between the Archbishop of Limoges and the Fathers of the Congregation of the Oratory of that diocese; and with regard to the administration of goods, he confirmed the response to the fourth question: "Are the internal accounts of the Congregation, with regard to expenses and accounts, subject to the direction of the Bishop?" To which he replied: "No, in all cases" (op. cit., page 481). Pope Leo XII, in the Brief *Cum Sicut*, dated January 30, 1828 (op. cit., page 479 in the notes), confirmed the resolutions issued in Messano, concerning the jurisdiction over the houses of the Oratory, and therefore...

[*Latin ed. p. 636*]

Regarding the administration of goods, concerning point 3: Whether it is permissible for the Archbishop to receive the accounts of the administration carried out for the construction of the church of the Venerable Congregation of the Oratory, or rather, whether the accounts for any administration should be rendered to that Congregation in such a case: on December 15, 1826, the Most Reverend Pacca gave a negative response in

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all respects (op. cit., page 53).

4°. Pope Gregory XVI, under the date of May 3, 1839, ordered the execution of a resolution issued in Pinerolo, concerning the exception granted by the Ordinary regarding point 4: Whether and in what manner the Congregation of Oblates is subject to the jurisdiction of the Ordinary, or whether and in what manner the Bishop, as Delegate of the Holy See, can make a visitation. On April 26, 1839, the Most Reverend Polidori gave an affirmative response regarding the church, but a negative response regarding the colleges, and concerning the governance and administration of the Congregation according to the Constitution of Innocent X, which begins with the words "Commissi Nobis," issued on July 30, 1647, with the proviso that the authority delegated for acting according to the Holy Canons is preserved (op. cit., page 479).

5°. Pope Alexander VII, in the decree issued on February 22, 1655, for the Lazarists, and Pope Pius VI and Pope Pius VII, with similar decrees for the Congregations of the Passion of Our Lord Jesus Christ and of the Most Holy Redeemer, having left these Institutes under the jurisdiction of the Ordinaries, declared them exempt regarding the administration of goods (op. cit., pages 476-77).

From the aforementioned apostolic dispositions, which pertain to the simpler institutes of religious vows, the cited author concludes as follows: "These can provide a rule, regarding the rights of Bishops in other Institutes, or Congregations not exempt, which have been approved by the Apostolic See, unless otherwise prescribed in the respective Constitutions confirmed by the Holy See" (op. cit., page 482).

[*Latin ed. p. 637*]

637 FROM THE HOLY CONGREGATION OF RITES OF ROMA. A Doubt Regarding the Days on Which Masses are Prohibited in Private Oratories. On January 30th, in the year 1895, a question was proposed in the meeting of the Liturgical Academy of ROMA concerning the days on which it is not permitted to celebrate Mass in private oratories. Since the Academics and Censors held differing opinions on this matter, after examining the Decrees and the practice; hence, the Reverend Director of the aforementioned Academy humbly approached the Holy Congregation of Rites, to which the same question had been previously brought, requesting, in his own name and in the name of the Academy, a solution to the following doubt: Namely, what are the truly solemn days, in which, for all those who do not have a special Indult, Masses are prohibited in private oratories? And the Holy Congregation itself, after considering the report of the undersigned Secretary, the careful opinion of the Liturgical Commission, and the matter itself, decided to respond as follows: Those days are, by their nature, solemn in the cases described in the Ceremonial of Bishops, Book II, Chapter XXXIV, No. 2, and are to be observed by

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command. And thus it responded. April 10, 1896. [Signature] CARD. ALOISIUS MASELLA, S. R. C. Prefect. [Signature] S. ALOISIUS TRIPEPI, S. R. C. Secretary. PLACENTINA in HISPANIA. A Doubt Regarding the Use of "Nipis" Fabric for Making Albs, etc. Joseph, Master of the Schools of the Cathedral Church of Placentinae in HISPANIA, ordered albs to be made from the finest fabric, commonly called "Nipis," which rivals and equals linen in its brightness, durability, and texture (although it is often inferior to the most carefully bleached linen in color). However, after carefully examining the Decree of this Holy Congregation of Rites of May 15, 1819, he hesitated to use it, because it was not made from linen or hemp. Since this fabric is far more expensive than linen, and the material from which it is made does not come from the fruit of a tree, such as cotton, but from the fibers of the plant itself, like linen; and since elsewhere in the praised Decree of this Congregation, it is expressly prohibited to make things only from cotton, he, doubting whether he was permitted to use this "Nipis" for the aforementioned albs, humbly submitted the following doubts to the Holy Congregation of Rites: I. Whether Corporalia, Pallae, or at least Amictus and Mappae, can be made from the fabric, commonly called "Nipis"?

[*Latin ed. p. 638*]

638 FROM THE SACRED CONGREGATION OF RITUAL, II. Regarding the question: "To what extent is it permissible for those [who have received the apparition] to speak about it?" And the same Congregation, after a thorough examination, including the opinion of another expert in the natural sciences, and after mature deliberation, at the Ordinary Sessions held in Vatican on the designated day, decided to respond: "To I: Negatively, to both sides. To II: Affirmatively, only with regard to the Albs, Amices, and Mappas, as long as they are consumed." And thus it responded and ordered that it be observed. August 13, 1896. CAI. CARD. ALOISI-MASELLA, Prefect. L. * S. A. TRIPEPI, Secretary. FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, INQUISITION, DECREE, by which the following is specifically condemned: n. 85 of the publication "Les Annales de Loigny" of Thursday, April 15, 1896. Furthermore, to the other egregious abuses, which the aforementioned assembly, convened in the parish of Loigny in the Diocese of Chartres, had for years been accustomed to, namely, to publicly proclaim and defend their own visions, revelations, and prophecies, but in truth, incredible delusions, without regard for truth or for the due honor of the sacred hierarchy, a bold act has now been added, which is unbelievable, but which is contained in the aforementioned publication, number eighty-five, as if it were a record of events that had taken place in pontifical consistories on November 29th and December 2nd, 1895. Moreover, the sum total of these events was that an oracle was proclaimed with the living voice of the Supreme Pontiff, by which the aforementioned

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publication would be approved; furthermore, the society that had assumed the name "Des Epouses du Sacré-Coeur de Jésus Pénitent," and the works of that same society, would be approved; and also, the interdict that had been imposed by the Ordinary of Chartres on Mathilde Marchat, who had attributed to herself the name Mary, would be revoked; and that woman would be restored to the sacraments as if by justice, and her alleged visions would be recognized as divine. However, the faithful, through these deceptions, are led astray, and furthermore, through the acts of the Ordinary of Chartres...

[*Latin ed. p. 639*]

From the Sacred Congregation of the Inquisition, number 639, approved and confirmed, especially by the decree by which that mendacious and impudent series of books or annals, known as "Loigny," was already condemned on June 27, 1894; it seemed advisable to address this new deception against the unwary. Therefore, this Sacred Supreme Congregation, by the express mandate of the Most Holy Lord Pope Leo XIII, declares and signifies to all and each of the faithful that the acts of the consistory of the pontiff, as related in the aforementioned book, are entirely false and fabricated; and it commands and orders that they be considered as such and treated as falsehoods. Furthermore, the condemnation of the "Loigny" annals, as mentioned above, remains firm; the eighty-fifth volume of these annals, which contains the acts of consistories along with many other things worthy of reprobation, is to be prohibited and remains prohibited; and whatever has been decreed by the Ordinary of Chartres or by the Holy See concerning the pseudo-community of Loigny, shall remain valid and firm; the woman mentioned above shall remain forbidden from receiving the sacraments, except in the article of death, if she has repented, a power being reserved to the Supreme Pontiff; the visions, revelations, and prophecies of Loigny are false and fabricated, and each and every person must consider them as such. Those who, of any sex, condition, or dignity, support this deception in any way, by consenting, adhering, or offering any kind of help or support, shall be entirely incapable of receiving absolution or any other sacraments, unless they repent. And all of these things are commanded to be published in the prescribed manner.

L. >$f S. Ios. Mancini, Sacred Roman and Universal Inquisition Notary.

FROM THE SACRED CONGREGATION OF THE INDEX, Friday, April 17, 1896. The Sacred Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, which presides over the condemnation, prohibition, purification, and permission of books of bad doctrine throughout the Christian Republic, on June 14, 1895, condemned and condemns, prohibits and prohibits, or orders that the following works be referred to the Index

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of Prohibited Books:

[*Latin ed. p. 640*]

640 FROM S. G. INDEX: Henri Enrico — The Positive School of Criminology — Conference. — Naples, Enrico Detken, Bookseller and Publisher, Piazza del Plebiscito, 1885. — Criminological Sociology — Third edition, completely revised, of "New Horizons of Criminal Law and Procedure." — Fratelli Bocca, Booksellers, Turin, Via Carlo Alberto, 3, 1892. — On Homicide and Suicide — Legal Responsibility — Fourth edition, expanded with new polemical additions, and two graphic tables. — Turin, Fratelli Bocca Publishers, 1895. — The Theory of Imputability and the Denial of Free Will. — Florence, 1878. — Homicide in Criminal Anthropology (the born murderer, the mad murderer) with an anthropological-statistical atlas. — Turin, Fratelli Bocca Publishers, 1895. — Prohibited Decree, December 6, 1895. "The Jesuits from Within" — Or, a sweeping exposé within the Society of Jesus. — Barcelona. Typografia de Louis Tasso, 1896. — Concerning the Private Cult of the Divine Hands of Our Savior. — Decree of the Sacred Congregation of the Holy Office, February 4, 1896. — "By which all writings, whether printed or not, in which special formulas of a new devotion, even under the pretext that they are private, are presented and propagated in any way towards the Most Holy Hands of Our Lord Jesus Christ, are prohibited. Therefore, no one of any rank or condition may dare to publish, or to read or retain, the aforementioned works, wherever and in whatever language, but must deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the Most Holy Pope Leo XIII by me, the undersigned, S.I.C., from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given at Rome, on April 19, 1896. f SERAPHINUS CARD. VANNUTELLI, Bishop of TUSCULANUS, Prefect. Fr. MARCOLINUS CICOGNANI, Procurator General, O.P., from the Secret Archives. Place for the Seal. On April 20, 1895. I, the undersigned, Mag. Cursor, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Mag. Cursor.

[*Latin ed. p. 641*]

641 LETTER OF HIS HOLINESS, POPE LEO XIII, TO THE BISHOPS OF HUNGARY. You have rightly decided, with great joy throughout Hungary, to offer the most heartfelt thanks to Almighty God. For, indeed, if any nation, and especially yours, ought to attribute the greatest power of its benefits to God, the most provident and conserving of kingdoms, it is because it has received, for many centuries and through difficult circumstances, such blessings. And now, the time has come to remember and celebrate these benefits, as your homeland happily returns to its natal day. For you are

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about to count the thousandth year since your ancestors established their homes and settlements in these regions, and the Hungarian nation began. We have no doubt that these solemn celebrations will undoubtedly have a most worthy and fruitful outcome. For there cannot be a sincere love of country that is not touched by the honor of the common fatherland, nor can the desire to emulate the glorious deeds of ancestors, publicly recalled, fail to stir up strong incentives. To this, a noble addition will be made by the friendly association of all enlightened nations, who, sharing in your joys, will certainly congratulate the kingdom, founded by just laws and institutions, preserved by civil prudence and military virtue, and brought to this lasting and extensive state by many excellent deeds. It is a most pleasing and delightful fortune for Us to have this opportunity to be with you, Our venerable Brothers, present in your midst, and to be concerned with your thoughts and feelings. This is especially true because of Our particular affection and concern for Catholic Hungary, and also because of the very studious will of Hungary itself towards this Apostolic See and towards Us, which has been repeatedly declared. Among other things, in recent years We have often seen Hungarians in Rome, properly led by you, visiting the tombs of the Apostles, to be venerated; We have seen them filled with devotion, offering, in the name of the entire people, the most beautiful testimonies of faith, obedience, and love. And they have not lacked Our benevolence and Our opportune exhortations, so that We might confirm their souls in the duties of the holy profession: although We have provided for the entire nation more abundantly and thoroughly through letters given to you once and again. Now, since it is pleasing to remember how reverently and gratefully the clergy and all good people have received these paternal arguments, We address you again.

[*Latin ed. p. 642*]

642 This letter, which is a testament to Our charity, should arrive; may it, with God's favor, increase both the secular celebration and the joy, and multiply the fruits. In all the events which are commemorated among you with such magnificent devotion, the virtue of the Catholic religion shines forth entirely, which is the best conciliator of public safety and the promoter or supporter of all kinds of good among the people. Indeed, as the more prudent writers of your affairs say, this region, which was once occupied, would not have been held for long, nor successfully, by the Hungarian nation, unless it had been led, through the teaching and grace of the Gospel, freed from the yoke of superstition, to fear the laws of nations, to harm no one, to show clemency, to cultivate the study of peace, to submit to princes as to God, and to practice fraternity at home and justice. — In a wonderful manner, the beginnings of the Catholic faith were consecrated among you, under the leadership of Géza and the leading men of the nation; and this was primarily through the efforts of the holy bishop ADALBERTO, a man

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renowned for his apostolic labors and, finally, for the crown of martyrdom. These beginnings proved all the more outstanding, inasmuch as the times and places were fraught with danger, and a disastrous discord had arisen with the Church of Rome from the Eastern side. The work begun by the father was continued and completed by STEPHAN, a Christian prince of most excellent example, who, with great zeal of mind and effort, sought the divine benevolence for you. He is rightly honored as the chief pillar and light of your nation, because, through the benefit of the true religion, he not only instructed it in the attainment of eternal salvation, the greatest of all goods, but also increased its advantages and ennobled its life. It was under this very prince, who, with outstanding piety, offered, dedicated, and consecrated his scepter to the august Mother of God and to the most blessed Peter, that the exchange of studies and offices began between the Roman Pontiffs and the people of Hungary, which We have praised on other occasions. The sacred bond of this union was, as it were, sealed by the royal crown, adorned with the images of Christ the Savior and the Apostles, which Pope Sylvester II, Our predecessor, sent to Stephan, when he bestowed upon him the title of king, which has spread the faith of Christ far and wide among you (i). It is worthy of note that, at the same time, the constancy of the Hungarians in their obedience to Peter is confirmed, so that this very crown has survived various and serious storms of time, shining in its original splendor (i). Clement XIII, Pope, in his allocution, "Si qui militari," January 1, 1758.

[*Latin ed. p. 643*]

LETTER 643, always held in honor, and religiously preserved as the greatest ornament and safeguard of the kingdom. Thanks to such patronage, Hungary, with its growing resources, entered the same paths as the peoples of young Christian Europe, and its own, strong and upright character, was drawn even more happily to the praise of all virtue and humanity. From this, besides other benefits and adornments, a considerable number of people emerged who, through the sanctity of their lives, their teachings, their letters, their arts, and their deeds, truly illuminated themselves and their homeland. And indeed, those who, as has been mentioned, strive to bring to light, through solemn ceremonies, a select collection of the merits of such religious figures, drawn from oblivion and silence, are doing a very good thing. Furthermore, literary monuments, both yours and those with which Our Apostolic archives abound, testify with the greatest agreement to something of great importance, especially in this time: namely, what role the Church played among your ancestors in public law, either in establishing or administering it: that wisdom, discipline, and justice certainly flowed into all orders, pleasing to all, and in every way. Moreover, the civil liberties, for which your people have never ceased to defend, were protected and defended by the Roman Pontiffs, as guardians

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and avengers, whenever that liberty was called into danger or jeopardy, whether requested or of their own accord. This happened more often in the past; especially when the most fierce attacks of the enemies of the Holy Faith had to be repelled. In this regard, no one can deny that the unwavering constancy of the Hungarians repelled the most terrible disasters that threatened many peoples in the West; yet, it is not obscure that Our predecessors contributed greatly to this fortunate outcome, through the provision of money, the sending of assistance, the forging of alliances, and the invocation of heavenly aid. This was especially the case with Innocent X, whose immortal name, made famous by a remarkable deed, liberated Vienna, which was being besieged by hostile forces, and Budapest, your primary city, after a long oppression, and magnificently vindicated them. Furthermore, Gregory XIII has earned an immortal merit for your people. For when, even here, religion was suffering greatly due to the influx of new ideas from neighboring countries, he, following the wise and generous counsel that he had already applied to other nations, also accepted it for Hungary, as a prominent and important member of the Christian world. Namely, he founded a college for you in the City, which was then...

[*Latin ed. p. 644*]

(j44 He deemed it fitting to add a letter to the German delegation, in which selected students, diligently instructed in the doctrines and virtues befitting the priesthood, might more fruitfully serve your churches: and this has occurred without interruption, with many being raised up who have held the episcopal office with great distinction, to the honor of both the Church and the state. These and similar benefits, which are the result of the Church's continued grace, we have gladly acknowledged, not so much as being recorded in the annals of the nation, as being deeply engraved in the hearts of its citizens. As all are witnesses, from the fifteenth century onwards, John Hunyades, whose wisdom and courage Hungary has never ceased to celebrate, declared with gratitude and eloquence: "This nation, I believe, would not have attained its stature had it not stood firm in faith, in resources." And likewise, all the orders of the kingdom, in a common letter to Nicholas V, professed: "Whatever we are, we are sustained by the most excellent Apostolic grace." These testimonies are so far from losing their weight with the passage of time that, on the contrary, they seem to gain in significance, as the benefits bestowed upon them have increased. Furthermore, it is evident in the Hungarians, as they have always demonstrated with great zeal, especially when it concerned their own glory, that they held their kingdom bound to the Apostolic See, as a special and devoted possession. Several facts from public records support this; either letters written by kings and nobles to the Roman Pontiffs with the utmost piety, or examples of magnanimous and valiant virtue, which, even before confronting the invading Muslim forces, provided support to the Church,

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defending its rights and avenging the injuries of the unfaithful. But, lest we pursue this matter further, it is sufficient to mention the numerous instances in which the services rendered to King Louis the Great by Innocent VI and Urban V were marked by unwavering faith and obedience, by sincere benevolence and esteem. And it is worthy of note what King Matthias wrote to Paul II, urging him to provide strong support to the Catholic name, which was being afflicted by the Hussites in Bohemia: "I," he said, "have dedicated myself, along with my kingdom, entirely to the Holy Roman Church and to your Beatitude. Nothing can be so difficult, nothing so dangerous, that the Vicar of God on earth, or even God Himself, could command, which I would not consider pious and salutary to undertake, which I would not approach with courage, especially when it is a matter of upholding the Catholic faith and crushing the perfidy of the wicked..." With whatever religious fervor...

[*Latin ed. p. 645*]

LETTER 645. It is necessary to inform you that Matthias, along with those devoted to the Apostolic See and to your Beatitude, remains in Hungary, and will always remain so. Nor has anything been lacking, either in the words of the King or in the expectations of the Pontiff; and this leaves a most weighty testimony for posterity. Furthermore, these are matters that pertain to this, as a most faithful reward of good will, namely, those numerous and important commendations with which your people have been honored by this Apostolic See; and also, those singular honors and privileges which have been granted to your kings by the same. It is fitting, and indeed this present celebration calls for it, to bring forth a more illustrious page from the extensive document by which Clement XIII confirmed for Maria Theresa, Queen of Hungary, and those who would succeed her in that kingdom, the title of "Apostolic King," a title conferred by privilege or custom. Therefore, let this proclamation of the Pontiff be enjoyed by fathers and sons, as it was by their ancestors: "The flourishing kingdom of Hungary, whether for its advancement of the Christian faith and glory, or because of the strength of its warlike people, it is most fitting for all; or, because of the nature of the land, it is most opportune. And no one is ignorant of how much and how admirably the noble people of Hungary have acted in defending and promoting the religion of Jesus Christ; how often they have stood firm against the most formidable enemies, and have blocked their passage, as it were with their own bodies, to the common ruin of the Christian commonwealth, and have achieved the greatest victories. These things are celebrated in fame and have been proclaimed by the most illustrious monuments of literature. But we must by no means pass over in silence that most holy and courageous Prince of Hungary, Stephen, whose memory, consecrated with heavenly honors and placed among the Saints, we duly venerate. And the traces of his virtue, sanctity,

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and fortitude remain in these places for the eternal praise of the Hungarian name. And his most beautiful examples of virtue have not been imitated by his successors in the kingdom throughout all time. Therefore, it should not seem surprising to anyone that the Roman Pontiffs have always adorned the Hungarian nation, and its princes and kings, with the highest praises and privileges, because of their great and admirable merits towards the Catholic faith and the Roman See. Among these, the most honorable is, in the first place, that before the kings, when they appear in public, the Cross is carried, as the most splendid emblem of the Apostleship, and this..."

[*Latin ed. p. 646*]

646 LETTER. So that the Hungarian nation and its kings may glory solely in the Cross of Our Lord Jesus Christ; and that they have always been accustomed to defend and conquer for the Catholic faith with that sign." (1) Indeed, although it is fitting that the solemnities be commended with such illustrious memories of men and events, and be adorned with great signs of joy, the very matter itself suggests that something more should be considered, something that is not the same and which will bring solid and lasting benefits to the common good. Hungary, it is understood, looks to itself: and, spurred by the awareness of the most religious fathers, and not ignorant of the times, it strives for worthy goals. You, of whatever order, are called by the exhortation of the Apostle: "Be firm in faith, act courageously, and be strengthened" (2); and it is fitting that all should join in one mind and voice: "Let us hold fast the confession of our hope, unshakeable" (3); "Let us not bring shame to our glory" (4). — It is certainly to be lamented, Venerable Brothers, that among all men, and those nurtured within the bosom of the Church, there are those who do not observe the Catholic religion either in thought or in deed as it deserves, but rather treat it as equal to any other form of religion, and even harbor suspicions and prejudices against it. It scarcely needs to be said how deplorable it is to reject this most excellent heritage of the fathers with a degenerate sentiment, and how ungrateful and wicked it is to refuse to acknowledge the benefits received over so long a time, and to neglect those that are to be expected in the future. For, as we pointed out at the beginning, virtue and efficiency reside in Catholic wisdom and institutions, and they are truly and abundantly beneficial to the good of human society; nor do they diminish with the ages, but remain always and vividly effective, and will continue to be beneficial in new times, provided they are not suppressed. — Concerning matters that more closely affect your people, We believe that We have already sufficiently advised them on religious matters, through previous letters and similar concerns, as well as by denouncing the dangers that threaten them, and by proposing aids that would better promote their freedom and dignity. And since civil affairs cannot be separated from religious matters, We have also endeavored to offer assistance to them, which is perfectly in accordance

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with our Apostolic office. For We have seen that it is fitting for your times (1) Letter, August 19, 1758. (2) 1 Corinthians 16:13. (3) Hebrews 10:23. (4) 1 Maccabees 9:10.

[*Latin ed. p. 647*]

LETTER 647: To persuade and to prescribe, as you well remember, constituted not a small part of what was directed towards the public good and prosperity. And if, in this very matter, the study of good things, guided by our counsel and advice, should be more diligently pursued each day, what hope should they not embrace, which blossoms with greater joy from this secular memory, and almost foreshadows the ripening of the common aspirations? Surely, it is the wish of no good citizen that, once the causes of dissent are removed, the honor due to the Church should be denied, from which both the state shines more brightly, and the ancestral religion, bound by a covenant, flourishes. Therefore, let the authority of the powers, the mutual duties of the orders, the institution of youth, and similar things, be diligently maintained in truth, in justice, and in charity: for upon these foundations and supports, states thrive and prosper. – That this union of good things may be maintained among you, as it was in the clearer memory of the fathers, it is certainly of the utmost importance that the affection for the Roman Church, as if by new auspices, may draw encouragement from their example. We have also learned, as is fitting, that in public celebrations, it is also proclaimed that the most honorable diadem of Stephen, with accustomed pomp, should be carried through the city by the prince, on a certain day, to dedicate the seat of the assemblies; for nothing is so closely connected with the glory of your nation and your kings, nothing so well suited to the proper governance of the state, as that sacred symbol of royal authority. But it is to be hoped that a double benefit will easily arise from this. One is that obedience and faith in the august House of Habsburg may be strengthened in the orders and in the multitude, since that diadem, freely offered to them by your ancestors, has been worn for the perpetual happiness of the kingdom; the other, which is the purpose of this, is that the intimate memory of the fathers, connected with the Chair of Peter, which was established by that pontifical gift, and which has been ratified and sanctified, may add strength and firmness to these bonds. Let the illustrious Hungarian people know that they can and should trust in the authority and grace of the Apostolic See: which will never forget the things that have been nobly accomplished by them for the Catholic cause, and which retains, and will retain, a maternal spirit of providence and benevolence towards them. – As far as it is in our power, if we have cared for and accomplished anything for your sake, may God graciously foster it to success, and may He be so present to us with His counsel and help, that we may be able to satisfy your requests even more. May He especially

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regard this.

[*Latin ed. p. 648*]

648 The present letter, imbued with the most immediate grace, is addressed to your Apostolic King, the orders, the clergy, and the entire people; may the abundant fruits of the goods which He Himself has promised to nations and kingdoms that observe justice and peace, be bestowed upon them. May your most gracious Lady MARY, and also Stephen and Albert, the apostles and heavenly patrons of your kingdom, also regard you; may you rejoice in the ever-increasing fruit of their salutary protection, so diligently sought by your ancestors and forefathers. — We add a singular wish with the greatest charity. May it be that all citizens, whom a single love for their homeland moves, and who are united in a fraternal manner for the same public celebration, may one day be united in the blessed embrace of the Church, their Mother, by the same faith. And you, Venerable Brothers, continue with all vigilance and diligence, as you have done, to merit the best for your people and your city; and as a witness to the divine benefits and the special benevolence of Our own, receive the Apostolic blessing, which We bestow with the greatest joy and affection upon each of you and upon all of Hungary. Given in Rome, at St. Peter's, on the first day of May, in the year 1896, in the nineteenth year of Our Pontificate. LEO PP. XIII.

[*Latin ed. p. 649*]

649 FROM THE HOLY CONGREGATION OF THE COUNCIL OF POLICASTRO, OF JURISDICTION, dated September 7, 1895. Council of Trent, Session 5, chapter 1, concerning Reforms. SUMMARY OF THE CASE. In the town of Vibonati, in the Diocese of Policastro, the parish church is reconstituted, that is to say, it registers all clerics, born there and residing there, so that, in proportion to the service rendered, they may participate in certain distributions, like canonical colleges. However, the laws of the Italian Government, which reduced its patrimony to nothing, could not be avoided. Through the industry and diligence of both the clerics participating and the faithful, because some profit could be obtained from the sale of goods, having sold goods at a higher price which had been purchased by the treasury at a low price, a certain sum was again acquired for the Church. Concerning the disbursement of this sum, by virtue of the power conferred by the Holy See, the Bishop of Policastro decreed on September 14, 1886, among other things: that all revenues should be allocated to the celebration of Masses with an alms of one *libella* with half, for those who have rendered service to the Church. For those absent, that is, for those who have not rendered service, a celebration of read Masses is established, but with an alms of only one *libella*. Among other clerics, the parish church of the town of Vibonati had given its name to the Reverend Raphael Fasanaro, who, in the present instance, is the plaintiff against the clergy of this church,

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alleging that certain rights arising from his co-option into said clergy have been unjustly denied to him. This was the occasion for the controversy. On October 13th, the Reverend Fasanaro, having obtained permission from his Bishop,

[*Latin ed. p. 650*]

650 POLICASTRO. He went to Naples for the sake of studies, and remained there for four years, attending the schools which they call "normal" in order to obtain the qualification to teach young boys the fundamental principles of the disciplines. However, as he himself testifies, he spent each year, during the time when the schools were closed, in his native town. Having successfully completed his course of studies, he returned to his homeland. Father Fasanaro, having received nothing from the revenues of his church during all this time, then requested from the clergy of the church of Vibo that a certain number of Masses be assigned to him for the four preceding years; namely, some Masses with the alms of a single book for the time spent in Naples, and other Masses with a larger alms for the time spent in his homeland, during which he served his church. Since it was not possible to resolve the matter peacefully, a judicial appeal was made to the Curia of Polcastro, and on February 12, 1894, the following judgment was issued, which, after settling several points of the case, declared one matter to be settled, while another was to be properly appealed and discussed. After making various observations of law and fact, the Ordinary decreed: "We reject the first point of the plaintiff's petition, declaring that no number of Masses belongs to him for the time during which he lived in Naples, for the purpose of study; we reject the second point of the plaintiff's petition, declaring that no number of Masses belongs to him, for any stipend, for the brief time spent in his homeland, for the purpose of vacation." The Synopsis of the Dispute: The procurator for this priest, in order to refute these observations of the judge, showed that the crux of the matter, in which the decision rests according to both law and the jurisprudence of the Sacred Congregation of the Council, and the constitution of the College, is this: a cleric of any church who leaves the town where that church is located, is considered a participant in the common Mass, if he retains a domicile there. He argues that it would be unjust to undermine this distinction, as the DEFENSE OF FATHER FASANARO.

[*Latin ed. p. 651*]

POLICASTREN. 651: It is not permissible for any citizen, due to absence for studies, to lose the rights of his citizenship! The author cites authorities related to this matter, as found in the work *Collectio etc.* by P. D. Pallottini, vol. 2, *Ecclesia Receptitia*, no. 2: "The chapter, or clergy, of any particular church is obligated to admit priests to the common Mass who are born of civil parents, who maintain their residence there, and who possess the

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qualities necessary for this purpose according to the statutes or customs of the Church; so that if such priests are denied admission, they are to be considered admitted, and from the day of the denial of admission, they are to enjoy all the benefits, daily distributions, and other advantages, as stated by Barbo, in *De Can.*, cap. 15, nos. 11 and 12; by Cardinal De Luca, in the same work, title, discourse 22, no. 4; and confirmed by the Rota in *Recen*, decision 9, no. 10, and decision 431, no. 27, page 18; by the Imolen Consortia, April 30, 1708, § *fui* before Lancetta; and in the Majorican College, March 13, 1708, § *Et sane* before Omanna, in *Caputaquen*, on the day of the Participation, November 21, 1739, § "Two." With these premises, the advocate argues that his client, a citizen of the town of Vibo, has not changed his domicile, even though he resided in Naples for the purpose of studies. The Emperors Diocletian and Maximian responded in this way in law VII of title XXXIX, book X of the Code: "And it is not doubted that each person has a domicile in the same place where he has established the sum of his property and possessions, from which he does not intend to depart, unless something calls him away; hence, when he sets out on a journey, he appears as a traveler; but when he returns, he ceases to be a traveler." And the Emperor Alexander, in the second law of the same title, states: "Nor are those who reside in a certain place for the sake of studies considered to have a domicile there, unless after ten years have passed, they have established their residence there." And Huth, in book 1 of the Decrees of Gregory IX, title II, question IV, teaches: "To establish a domicile, simply such that the forum is determined by the domicile, two things are required: intention and fact, or actual residence begun with the firm intention of remaining in that place." Therefore, the orator concludes, in the appealed sentence, it is observed "from..."

[*Latin ed. p. 652*]

652 POLICASTRO. To which participation was always denied to those priests who withdrew from it, either by remaining in Naples as chaplains and assistants to parishes, or by emigrating. "Furthermore," the advocate argues, "it is not permissible to invoke a custom that is alleged, which is contrary to the right of the client, who was born and has always remained a citizen of Vibo Valentia. Moreover, according to the speaker, this argument demonstrates that the refutation of the sentence is superfluous with regard to the Bishop's permission, which is asserted to be ineffective for the Reverend Father Raphael Fasanaro, as a member of the common mass, because he left after the age of 25, and did not devote himself to the study of sacred sciences, but to elementary studies. The advocate pointed out that, in fact, the client had devoted himself to the study of literature in order to perform the noble office of teacher, for the greater glory of God, in a school of either clerics or laymen; and it was improper for the judge to remain silent about this, and to speak only of the profit to be gained; as it would be insulting to

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attribute to someone the purpose of obtaining benefits from certain Church assets, and to omit the purpose of the sacred office itself! Furthermore, the advocate insists, the Bishop can extend permission to clerics over the age of 25, who are studying other disciplines besides sacred ones, as appears from the authorities collected in the appeal document. Then, the advocate points out that the question must be judged not according to the alleged custom, but according to the Decree, granted by the Supreme Pontiff to the Bishop of Policastro on September 14, 1886, the words of which are as follows in the third part of the first article: "the entire income must be spent on the celebration of Masses, with alms of one and a half livres; this is for those who have served the Church; for those who are absent, or for those who have not rendered any service to the Church, the alms are one livre." However, the advocate concludes, in reality, the decree of September 14, 1886, expressly deals with those who are absent through the word "assenti." The Defender, however, strongly...

[*Latin ed. p. 653*]

POLICASTRO. 653. He refutes the argument based on a supposed ancient custom; because in this way, the judge attempts to overturn a new law established by the same Bishop. For, according to the statute of the College approved by the Bishop of Policastro on July 4th of the year 1892, those who participate in the Holy Mass are also the clergy who are legitimately absent from the city of Vibo, for a just cause. The procurator notes that this article refers to any legitimate cause; although the following sections enumerate certain causes only as examples. Otherwise, it would be superfluous and useless. And, according to the orator, for the benefit of his client, the cause of study is recognized as legitimate and most favorable by the same Bishop, who granted his client permission to be absent. Then, the advocate points out that this concerns not the Holy Mass properly called, which was taken from the treasury, but the Holy Mass improperly called, namely, the Mass and its obligations, which, along with alms collected from the revenues of the church, are celebrated everywhere. Afterwards, the advocate proceeds to the second point, namely: Whether Reverend Raphael Fasanaro had the right to celebrate Masses with alms for half a book during the time he served the Church of Vibo. He observes that a custom is alleged which does not exist, and is asserted only by him who is at the same time witness and adversary, namely, the parish priest of the Church of Vibo. The argument is based on a certain article of law, which was proposed, stating that no one should participate in the Holy Mass if he had not served the Church for at least four months within the year; but this argument is reflected back upon the adversary: for that article was not included in the text of the law, and therefore cannot have legal force. These points appear so clearly to undermine the judgment, that the advocate requests that his client be absolved from the court costs, for which he had been condemned to pay

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two-thirds. DEFENSE OF THE CLERGY. On the contrary, the advocate for the clergy, after demonstrating that the parish church of Vibo is still a rectory, and therefore not united with true benefices, proceeds to...

[*Latin ed. p. 654*]

654 POLICASTRO. He argues that it is unjust to deny Reverend Fasanaro the right, as a priest of the Clergy of Vibo, to enjoy the privileges that are granted to clerics who hold ecclesiastical benefices. However, the priests of the Clergy of Vibo do not possess any benefices or stipends; therefore, while they are teaching theology or engaged in its study, they cannot receive the income derived from benefices and stipends. Regarding those emoluments which are their own, and which are not the fruits of benefices, nor, so to speak, are received by reason of benefices and stipends, the law is entirely silent. Therefore, the procurator argues that these emoluments, namely, the right to receive a portion of the offerings made at Mass, are granted to those who have participated in the sacred rites, as prescribed by the diocesan synods and by the custom of the Clergy of Vibo, and who have assisted the archpriest in the care of souls. Therefore, he who is absent, and does not perform these duties, has no right to these offerings.

Furthermore, the Orator does not claim that permission to be absent has been granted by the Bishop, as is determined by article 94 of the law of the Clergy of Vibo. Since this clerical statute was promulgated in the year 1892, the procurator notes that an even older custom prescribed the same, as testified by the Curia of Policastro. But even if this were to be considered certain, which is false, the patron argues, the innumerable laws of Vibo can be adapted to the emoluments of the Church, which the sacred canons establish for benefices and stipends; and yet, even with this premise, Reverend Fasanaro has no right to claim these emoluments for the time during which he resided in Naples for the sake of his studies. For the privilege of profiting from benefices is not granted to all, but only to those who have not reached the age of 25, and who are engaged in the study of theology or of sacred scripture, or of canon or civil law, for a period of only three years. However, this is astonishing, according to the patron, that Reverend Fasanaro does not deny that these laws exist; but he tries to evade them, saying that these laws refer to canon law: but they do not apply to those who participate in the offerings of the churches.

[*Latin ed. p. 655*]

POLICASTRO. 655. To this, the defender readily assents, stating that, in this matter, the Reverend Fasanaro is undoubtedly mistaken, and that it is not clear to him that the limitations of the privilege only apply to canonical matters, while the privilege itself and the priests of the recipient churches are aided thereby. For this privilege was introduced by positive law, in order to limit natural law, according to which anyone who receives any

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emolument in return for a service, which must be performed in a certain place, is obliged to reside in that very place. But the law granting the privilege speaks only of benefits and stipends: therefore, that law cannot be applied to countless recipient churches, in which there are no benefits or stipends. Moreover, the advocate insists, if the Reverend Fasanaro truly wishes to claim such a privilege for himself, it is only just that he also submit to the limitations established by law. The advocate points out that, in the judgment of the first instance, the Reverend Fasanaro adhered to the decree issued on September 14, 1886, by the Bishop of Policastro, with apostolic authority, in which the stipend for Masses is simply and plainly increased, and that only for those who participate in the sacred ceremonies in the church of Vibonati. In only one case is it permitted for those who are not present at the sacred rites to celebrate Masses with a smaller offering, namely, only for those priests to whom public pensions are paid, after the goods of the church of Vibonati have been transferred to the diocesan treasury: but the Reverend Fasanaro is not among them. Therefore, the defender observes, the distinction between Masses with an offering of one book and with a larger offering occurs only in this one case. Furthermore, the advocate continues, if the Reverend Fasanaro has improperly used the decree of 1886, it is not permissible for him to use articles 87 and 94 of the law of the clergy of Vibonati, in which all the revenues of that church are divided into three parts, so that two parts constitute the common fund, and the remaining part is for distributions. Indeed, in that law, the right to the common fund is granted only to the sick, or to priests who instruct young clerics in the diocesan seminary, and to those who...

[*Latin ed. p. 656*]

656. POLICASTREN. There are those who are held in prison, or, having been unjustly vexed, have been forced to flee. Furthermore, this law was established on July 4th of the year 1892, and it only began to be effective from that day forward. However, the priest Fasanaro went to Vibonati on October 13th of the year 1889, and returned in July of the year 1893. Therefore, if anything in that law could be found that would favor him, it could not be applied to him, except only during the last year of his absence, the Advocate concludes. Finally, the defender argues whether the priest Fasanaro could claim any right to celebrate the Vibonati Masses for the period in which, during his vacations, he returned to Vibonati each year. To this, the defender vehemently denies, asserting that the custom of the church of Vibonati does not favor such a claim, as he himself contends, but rather contradicts it entirely. The Advocate argues that it is permissible for all priests of Vibonati to attend Mass whenever they wish, and to abandon it at their discretion; but, for the convenience of the administration of the goods of that Church, a custom has been established, so that, with regard to the collection of revenues, no account should be taken of brief attendances or

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brief absences, and that no one should be admitted to participation unless they have attended at least three months of sacred rites in the year. Consequently, the Reverend Fasanaro benefited from this custom in the year 1889, in that, although he left Vibonati on October 13th, he was nevertheless admitted to participate in the Masses, as if he had continued to serve the Church until the last day of December of that same year. But in each of the four years that followed, he was never present in Vibonati for three full months. In the year 1890, he was in Vibonati for forty days; in the year 1891, for twenty-eight days; in the year 1892, for almost two months; and in the year 1893, for only four days, during the time of the festivities; for, having returned home after completing his studies, he did return to participate in Mass that year. Therefore, such brief periods of time could not have conferred upon him any right to receive revenues in the Church of Vibonati, except for any that may have arisen incidentally during those periods, the Advocate infers.

[*Latin ed. p. 657*]

POLICASTRENSE. 657 Having considered both sides of the matter, the following questions were proposed for resolution: I. Whether the judgment of the court of Policastrense, concerning the main points, should be confirmed or upheld in the appeal. Specifically: I. Whether the judgment should be upheld; II. Whether the Reverend Raphael Fasanaro had the right to celebrate Masses with alms derived from the revenues of the parish of Vibonati, from October 1889 to July 1893; namely, I. concerning Masses with alms of a single book, for the time he resided in Naples; 2° concerning Masses of greater alms, for the time he resided in Vibonati in the aforementioned case. RESOLUTION. The Sacred Congregation, after deliberation on September 7, 1895, decided to respond: Regarding I: The judgment is to be confirmed. Regarding II: As provided in the first.

FROM FODIANA, CONCERNING THE SHRINE COMMONLY CALLED "DELL' INCORONATA." December 14, 1895. By summary petition. Not far from the city of Fodiana, there exists an ancient temple dedicated to the Blessed Virgin Mary, commonly called "Santuario dell' Incoronata," to which pilgrims flock continuously from the last Saturday of April to the first Sunday of June, offering abundant alms and a great number of Masses. Furthermore, this church, which was an Abbey under the Consistorial jurisdiction, possessed a dowry in rural lands, until, due to the upheaval of public affairs, at the end of the last century and the beginning of the current one, its assets were confiscated and applied to profane uses. Finally, the matter was restored to its former state by the COMPENDIUM OF FACTS. Acts, Volume XXVIII, page CCCXXXV. 42.

[*Latin ed. p. 658*]

658 - In Fodiana, sub principatu Borbonico, in virtude legis concordatae

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cum Sancta Sede anno 1818, per ministros delegatos, ad eandem legem adducendam ad executionem, desideratum fuit ut dicta ecclesia, cum suis bonis, redderetur ad patrimonium consistoriale. Verumtamen, interea, redditus huius abbatiae fuerant concessi administratoribus domorum hospitalium civitatis Fodianae, secundum legem, ut expensis cultus prospicientur, cum facultate erogandi redituum superfluorum partim favore domus hospitalis pro infirmis eiusdem civitatis; partim pro alendis puellis pauperibus, nec non feminis convertendis, in distinctos conventus adunatis. Quare, vehementius expostulatum fuit ne pauperes civitatis Fodianae huiusmodi subsidiis privarentur, et conventum fuisse est 1) ut viri religiosi, instituti a S. Ioanne di Dio, sibi assumerent regendum hospitale civitatis, 2) item sibi vindicarent redditus dictae ecclesiae abbatialis, cum obligatione impendi partis redditorum supradictis feminarum conventibus, 3) horum conventuum ad tutanda iura statutum fuisse est, ut Episcopus delegaret sacerdotiem qui assidue in oblationes a peregrinis perceptas vigilet, ne in iisdem dispartiendis, hi conventus detrimentum patiantur. Ut locupletiores essent redditus, tum pro expensis cultus sanctuarii, tum pro subsidiis piis locis erogandis, narrat Episcopus, conventum fuisse est, ut a Sancta Sede peteretur facultas reducendi eleemosynas missarum, quae in ipso sanctuario celebrari non possent, destinando partem eleemosynae residuam usui iam explicato. Nunc autem Ordinarius animadvertens quod missae cum eleemosyna parva difficile recitantur, potius efflagitat facultatem reducendi numerum oblationum missarum, tali ratione, ut duae partes ex toto reducerentur, alia tertia pars applicaretur cum eleemosyna libell. 1,25. Vis autem pecuniae duarum partium impenderetur in onerum satisfactione. Disceptatio Synoptica Praemonitum est recolenda esse verba Bened. XIV in opere - de Syn. Dioec. lib. 13 c. ultim. n. 29 . . . - « cum

[*Latin ed. p. 659*]

FODIANA 659 concerns manual Masses, for which alms are received for their celebration; if their celebration is neglected, a reduction cannot take place, but a remission or composition is necessary... "He gives the same reasoning in the cited passage, n. 15... "Indeed, such remissions or indulgences are said by some to be reductions of Masses; but this is less correct and entirely improper: since these only concern the past, while true and properly called reductions provide for the future." Therefore, it is said that the Holy Congregation [Sacra Congregatio] has written to [the diocese] so that a greater number of Masses than possible may be celebrated in the Church of Santa Maria Incoronata... in order to provide the alms for the outstanding Masses that have been announced... but in a public and open place, a notice should be placed declaring to the faithful the aforementioned provision of alms. In truth, this concerns a change of will, which, since it is decided before it is made known to the faithful, it was

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fitting to inform the faithful of this change. Another rescript refers to reducing the number of Masses in this way. The Ordinary rightly laments the effects resulting from the reduction of alms. Indeed, he states that he can only reluctantly allow Masses to leave his diocese with such meager alms, since their application by miserable priests abroad is precarious; and suitable alms for Masses are lacking among his own people. Therefore, in order that something may be more quickly addressed, it seems necessary to recall to the Bishop's attention that no one should question the Bishop's power to determine a certain amount of alms for Masses, so that priests should not be obliged to accept even a meager offering for the application of Masses - thus Benedict XIV in op. Be Syn. Bio ee. lib. 13, cap. 25, n. 28. This assessment of alms should later be adapted, both for perpetual Masses and for manual Masses, as held by the Holy Congregation [Sacra Congregatio] in Florentina - Reduction of burdens - August 2, 1823, in Senogallien. - Reduction.

[*Latin ed. p. 660*]

660 FODIANA burdens - 28 April 1827 § And also in Ancona - Reduction of Masses - 26 April 1828 § If. - Furthermore, it is the most equitable proposal of the Ordinary, namely, to ensure that sufficient alms are provided for the Masses of his priests, and that he himself diligently oversees the celebration of the Masses. This corresponds exactly to the decrees of Urban VIII and Innocent XII concerning the celebration of Masses. Moreover, in this case, it must be considered how to deal with the excess of Masses offered beyond the number that can be celebrated; to this question, Benedict XIV responds in the aforementioned passage, number « Since it sometimes happens that the generosity of pious offerers has increased to such an extent that the sacrifices for which they offer alms cannot, for any reason, be celebrated; which, if they were refused, would at the very least cause offense to people and discord among souls; and much would be taken away from the piety and religion of the faithful; nevertheless, it has always been instilled that every effort and diligence should be made to carry out the burdens undertaken; the number of chaplains should be increased, and if this cannot be done, at least the pious offerers should be informed of the number of Masses that can actually be celebrated; and those for whom the Masses could not be celebrated, because they offered alms for them, should be made participants in the fruits of the Masses offered in the church for the benefit of benefactors in general; or at least it should be done so that the Masses desired by them are celebrated in another church, according to their intention, and this should be announced to all in a public and obvious place, by means of a posted notice. » In this sense, the Holy See clearly responded in a written document of July 5, 1820, with the following words: « ... that they may be allowed to provide, to the greatest extent possible, the alms for the Masses offered in the Church of Santa Maria Incoronata ... so that the

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alms for the aforementioned Masses can be provided and paid according to the requests; but in such a way that a notice is posted in a public and obvious place, declaring to the faithful the aforementioned provision of alms. » In order that the faithful may not be deterred from such offerings, it should be endeavored that...

[*Latin ed. p. 661*]

The cult of the sanctuary should be increased, and more Masses should be celebrated, and more solemn functions performed. Furthermore, in the very table, the faithful should be clearly taught that nothing will be taken away from their spiritual benefit because of the different amounts of alms given. Therefore, it would also seem fitting to decree that each year, a solemn Mass and Office for the Dead should be celebrated in the sanctuary for those for whom alms could not be given that year during the celebration of the Masses. Other pious considerations do not seem to be lacking by which the Ordinary can attract the faithful and not deceive them in this holy endeavor. On the other hand, it must not be denied that it is within the supreme power of the Pontiff to permit the Bishop to allow a certain number of Masses not to be celebrated, if alms offered for another purpose are given; for the Pontiff, possessing full power of dispensation from the merits of Christ and all the Saints, decrees that nothing should be lacking to the faithful's will in that spiritual benefit, either to themselves or to the souls in purgatory, in applying [the alms]. With the foregoing in mind, the question was asked: what should be the answer? RESOLUTION. The Sacred Congregation, after deliberation on December 1, 1895, decided to respond: To reduce the number of Masses, according to the request, to a period of five years, to achieve the effect mentioned in the request, provided that it does not exceed the true necessity, preserving the rest of the provisions of the decree of July 3, 1883, and with the consent of the Most Reverend Father.

[*Latin ed. p. 662*]

662 SQUILLACE. ERECTION OF A PARISH. On December 14, 1895. By summary proceedings. A SUMMARY OF THE FACTS. On May 19, 1888, this matter was presented in writing, with the following formula for inquiry: "Is there a place suitable for the canonical erection of a parish in this case?" The response given was: "Affirmative, after hearing the Chapter and with the consent of the pastor, provided that a suitable location is established within three years." However, this decree was still pending, and its execution was delayed for several reasons reported by the Bishop. These reasons, in order to provide a mature and informed judgment, are again presented, concerning what is presently the case in law and in fact. In the year 1886, the Bishop of Squillace (1), reporting the prayers of the inhabitants and the municipality of Mongiana, stated that this village had

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gradually developed and grown alongside a military factory established there by the government approximately a century ago; it now numbers 1200 inhabitants; but it lacks its own pastor. Until recently, a military chaplain, sent by the government to provide spiritual care for the workers of the factory, was also delegated by the Bishop to perform pastoral ministry for the surrounding population. However, due to the suspension of the government's provision for the chaplain, it has been customary for the Ordinary to send a priest to care for the church and administer the sacraments to the people. The people and the municipal authorities have urged that this church be erected into a parish, so that they may be provided with a permanent and proper pastor. However, a suitable location has been lacking. Nevertheless, the Bishop continued, it is important to report with great joy that the contributions of the people, although poor, and the favor of the municipality towards the parish are not lacking. Indeed, the civil government has promised a stable contribution as soon as the parish is established. (1) *Recole*, Vol. XXI, 182.

[*Latin ed. p. 663*]

SQUILLACEN. 663 Wherefore, the Ordinary requested the faculty to erect a parish, notwithstanding a certain and suitable deficiency. But it was deemed that this matter should not be committed to uncertainty, and therefore, it was replied: "Report." However, in these days, the municipal authorities, and the entire council, indeed, and even several inhabitants, again petitioned the S. O. C. for the granting of this favor. Concerning this matter, when I sought the opinion of the Bishop, having heard those who had an interest in the matter, he referred to what he had previously presented, and added nothing further.

Synopsis of the Discussion. Furthermore, the pastor of that territory, in which the Pago of Mongiana is situated, should certainly be heard, since, through its dismemberment, it will suffer some detriment, at least with regard to the extension of jurisdiction. This, indeed, would be in accordance with equity, and with the rule of law in VI, iuncta Clem. 1 § ad haec De stat. monach, as well as with the writings of DD. Reiffenstuel in lib. 8, tit. 12, n. 72, and others, and with the ordinary practice of the S. C. C. But, besides this difficulty against the granting of the favor, there is also the deficiency of a certain and suitable provision. For, in the absence of this, a parish should not be established, for both natural justice and equity absolutely require it. For he who serves at the altar ought to live of the altar, and no one goes to war at his own expense; but everyone justly seeks a fair compensation from the work which he performs, from which he may live. Therefore, to erect offices or to send ministers to labor without a suitable and certain salary is neither proper nor expedient. As is also positively established in cap. Extirpandae 39 De praebenda Conc. Trid. sess. 21, page 4, and in the Constitution of St. Pius V, Ad exequendum. Furthermore, the dues owed

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to the curates are, generally speaking, assessed at 100 scudi, not only by the Tridentine Council, sess. 24, cap. 13 De reform, but also by St. Pius V in the aforementioned constitution, and by the Rota par. 18, tom. 1, decis. 374, num. 1, Recent, with common consent. But although this assessment is not absolute, and no certain rule can be assigned in this matter, it is left to the judgment of the judge.

[*Latin ed. p. 664*]

664 SQUILLACEN. It is most desirable that this be the case; nevertheless, what the law, both natural and positive, absolutely requires is that this [parish] be sufficiently endowed with whatever is suitable for living honorably and with certainty. This, however, cannot be found in the present situation. Indeed, the support that the municipal government grants to the pastor is meager, amounting to approximately 300 livres, and uncertain, for it can easily be suspended, or perhaps even must be, being replaced by a support that it hopes to obtain from the administration of ecclesiastical funds, once the parish is formally established; for the municipality is in a precarious economic condition. However, the objections against the granting of the requested dispensation do not seem to be of decisive importance. The first concerns the lack of consent from the pastor of the territory where the new parish is to be established. Indeed, the pastor of the territory will suffer no detriment from this action: not a detriment to his jurisdiction, for the pastor of that neighboring territory never seems to have exercised jurisdiction there; until now, a military chaplain, by order of the senior chaplain, has administered to the souls residing in the *officina ferraria*, and, by delegation of the Bishop, to the families in the surrounding area; now, however, the pastor of the church is sent there directly by the Bishop. Nor is there material damage, because this parish benefice has never contributed anything, neither from the beginning when the church of Mongianno was established, nor today when it is to be raised to a parish. Moreover, a division is most distasteful, especially if it is made of a benefice or of the goods of the beneficiary; for in this way, the status of the old benefice is harmed, and the means of honest support are diminished for the former pastor; but the division of jurisdiction or territory alone, and especially in this case, does not in any way harm the economic condition of the old benefice, but may greatly offend the ambition of him whose jurisdiction is restricted. However, this should not be considered in comparison with the good of souls that results from the division of jurisdiction; nor can it be applied to the present case, because, as stated above, the jurisdiction was already, in fact, divided.

[*Latin ed. p. 665*]

SQUILLACEN. 665 "Concerning the two cases mentioned above, which must be carefully distinguished in the dismemberment of a parish, namely,

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the division of the benefice and the territory, it is most objectionable to divide the territory, and less so to divide the benefice; this is deduced from Torricelli, *De union, benef.*, question 882, no. 2, chapter 33, *De praebendi*. Also, from the Sacred Congregation of Councils, August 23, 1755, Pallottini, vol. 8, no. 33; Garcia, 12, 11, 113; Leurenius, 3, 909, 1, and in the *Acta S. Sedis*, vol. 10, no. 269. Therefore, from all these considerations, it seems that the omission of hearing the pastor of the territory is not permissible. But neither is a vague or insufficient offer to be considered absolutely adequate. Indeed, although the *congrua* is said to be in 100 scudi according to the Council of Trent and the constitution *Ad Exequendum*, this measure is not certain. Rather, in the constitution *Ad exequendum*, it is more precisely prescribed that the *congrua* should not be taxed to the ordinary for more than 100 scudi, nor less than 50 scudi. And in the Council of Trent, the *congrua* of the pastors is not properly defined; but only it is forbidden that parishes, which do not exceed the sum of 100 ducats, be burdened with pensions. Therefore, the amount that the *congrua* of the pastors should be is not defined; but only the law requires that it be certain and sufficient, as is generally held by the Rota, as can be seen in part 6, decision 230, no. 2, *Recent*, and in the writings of DD. apud Ferraris, v. *Congrua*, article 2. But in the matter that the *congrua* is certain, it is proven from the aforementioned municipal resolution, where it is stated that the municipality, by virtue of a royal decree, must annually pay a subsidy of approximately 400 *libellae*, partly for the benefit of the church rector. And the municipal councilors will take care to refund this burden to the public administration of the funds for worship; nevertheless, it does not seem doubtful that the municipality's contribution will cease, because another will succeed. But that the *congrua* is sufficient, this can seem to be confirmed by another argument. Indeed, although the subsidy that is currently granted is not increased, nevertheless, since the church rector has lived and still lives from it, it is not doubtful that the pastor can also live from it. Moreover, it is to be hoped that with the erection of the parish, the economic condition of the church and its administrator will be improved.

[*Latin ed. p. 666*]

666 SQUILLACEN. Because the decree of the Council of Trent, in Session 21, chapter 4, concerning the matter, states that "in those [parishes], in which, because of the distance of the place or the difficulty, the parishioners cannot, without great inconvenience, access the sacraments and hear the divine services, the Bishops, according to the form of the Constitution of Alexander III which begins -Ad audientiam -, may establish new parishes, even without the consent of the rectors." - Therefore, it remains only to establish a suitable [financial arrangement], whereby the Bishop, or now through an imposed, more substantial pension to another, or through

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another form of compensation, can be established, provided that he can rely on the moral certainty that the Government will not derogate from the given promise. With these things noted, the question arose as to what should be answered in prayer. RESOLUTION. The Sacred Congregation, after deliberation on December 1, 1895, decided to respond: Regarding the consent of the parish priest, considering the newly presented information, it is necessary to retract from previous decisions; regarding the rest, in accordance with [the request]. The opinion is that it should be written to the Bishop, that he himself can proceed to the erection of a parish before the establishment of a suitable [financial arrangement]; which, however, must be established within three years, having made an agreement with the Most Reverend [Cardinal]. NULLITY OF MARRIAGE. On September 7, 1895. Session 24, chapter 1, concerning the reform of marriage. Margaret, a young woman of ingenuous mind and conspicuous standing, who had barely reached the age of 17, was joined in marriage, on February 12, 1879, in the church of Saint Augustine in Paris, to Augustine, who was 36 years old, in a matrimonial bond, according to the laws of Trent. This marriage, which was very much desired by the bride's mother, did not succeed, since it appears that Margaret married Augustine. COMPENDIUM OF THE FACTS.

[*Latin ed. p. 667*]

PARIS. 667. Driven by a reverential fear. Margaret recounts that from her childhood, she harbored a strong aversion towards August, who frequently visited her father's home. Therefore, when presented with the prospect of marriage by her mother, she immediately rejected it, openly declaring that she felt a profound aversion towards August. However, her mother, as several witnesses attest, determined to sway her daughter's will, besieged Margaret for several months with persuasions, entreaties, tears, and reproaches. Consequently, the young woman, as she herself recounts, feeling that she could no longer resist her mother's will without causing her great sorrow, yielded, albeit unwillingly. The marriage was then promptly arranged and celebrated as soon as possible. After the marriage, the bride, if she is to be believed, considered herself bound to her husband only in appearance, by the ecclesiastical rite, but not in reality, by the consent of her mind. Therefore, she often considered leaving her husband, and finally, when her husband's extravagance increased day by day, to the point that he almost dissipated her entire dowry, she abandoned him after eight years of cohabitation and took refuge in Paris with her parents, requesting a separation of property from the civil court, which she easily obtained at the end of the year 1887. Several years after the separation, Margaret, as she recounts, revealed her domestic troubles to her own confessor, from whom she learned that there was no marriage if the consent given verbally was vitiated by reverential fear. At that time, Margaret, in May of 1893, pre-

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sented a petition to the Most Reverend Archbishop of Paris, requesting that her marriage be declared null. At approximately the same time, Margaret initiated a divorce proceeding in the secular court against August, which she obtained. Subsequently, for reasons of generosity, as she swears, she gave him 100,000 livres. The Parisian court, having received the petition, quickly examined the case, considering the testimonies of the plaintiff, the husband, and several witnesses. Finally, on June 12, 1894, the appointed judges, after considering the favorable opinion of a theologian and canonist, declared the marriage null.

[*Latin ed. p. 668*]

668. PARISIEN. And a marriage annulled by force and fear, namely, due to a reverential fear unjustly instilled by the mother. The defender of the marriage bond appealed to the Holy See after a decision by the Parisian court. In a synoptic discussion, two advocates for Margaret presented a forceful argument, and first, they explained the nature of reverential fear, proving that in this case, the marriage was indeed annulled. They stated that the general principle is that "a grave fear of some natural evil, instilled by a free cause, unjustly and directly extorted from the marital consent, invalidates the marriage." Furthermore, the advocates inquired, is reverential fear said to arise from the reverence with which we regard someone superior? But this is an etymological notion, which presents no real difficulty. If we seek a real definition, we find that doctors do not agree on it, although their disagreement is merely theoretical and does not extend to practice. Most Doctors consider reverential fear to be the fear of offense or displeasure of a superior; that is, we act out of reverential fear when, 'lest we cause offense and displeasure to a superior whom we love and honor, we behave in a certain manner, and do something that he desires, or omit something that he does not want; although we would not have done or omitted it of our own accord.' This is the notion of reverential fear that is more accepted among Canonists; thus, Reiffenstuel, book 1, Decret, title XL, On those things that are done by force or by some cause, number 94. Other authors, on the contrary, maintain that fear is: "a trembling of the mind due to an imminent or future danger," and argue that fear does not exist unless we tremble because of an evil imminent to us, and therefore, we do or omit something in order to avoid that evil imminent to us. But offense or displeasure of a superior, considered in itself, is not an evil imminent to the inferior, and therefore, offense or displeasure alone does not invalidate a marriage.

DEFENSE OF THE WOMAN.

[*Latin ed. p. 669*]

PARISIAN. 669 The superior does not inspire fear. Thus, Pontius, *De

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matrimonio*, book IV, chapter V. D'Annibale, *Summula* etc., volume 1, § 438, note 14, and others. Having explained the opinions of the Doctors concerning the nature of reverential fear, the proponents make three observations. First, they readily admit that reverential fear, at least in its pure form, is not present when there are stripes or threats; for in that case, there is fear arising from the stripes or threats, which is ordinary and common; then, there is fear arising from reverence, which is and is called reverential. Second, they believe that even the mere offense or displeasure of a superior, considered in itself, can generate reverential fear; for the offense or displeasure of a person whom we love and revere is an evil to us, or displeasing to us, if our love and reverence are real. Third, they finally observe that this discrepancy in opinions concerning the nature of reverential fear is more theoretical than practical; for from the offense and displeasure inflicted by a superior, there naturally and almost necessarily arises his indignation towards us, harshness of countenance, reproach, bad treatment, or a probable estimation of such things, importunate prayers, etc. From all of this, they argue that we act out of reverential fear when we do or omit something that does not please us in order to avoid the offense or displeasure of a superior and the subsequent signs of his indignation. Afterwards, the advocates affirm that the mother is to be included among those superiors who, by their authority, inspire reverential fear; as the Doctors teach. To this point, St. Alphonsus, *Theol. Moral*, book VI, n. 1056: "Reverential fear is that by which one fears to resist him to whom one is subject, namely, father, mother, grandfather, father-in-law, husband, king, lord, prelate, guardian, and curator," and Sánchez, book IV, disp. VI, n. 24: "Although it is not so easily presumed that there is this fear with respect to the mother; but if the mother were cruel and austere, and accustomed to carry out threats, then the reverential fear of the mother is sufficient, as is that of the father." In this way, having explained the nature of reverential fear, the proponents...

[*Latin ed. p. 670*]

670. PARISIENSIS scholars argue that reverential fear can invalidate a marriage, as all eminent Doctors teach. Sánchez begins the discussion, and after having taught that only reverential fear (namely, the fear of offending or displeasing a superior) is not sufficient to invalidate a marriage, in book IV, disputation VI, number 14, concerning marriage, he states: "It is inferred that if a daughter enters into marriage, without prior threats, solely out of the fear of incurring the father's displeasure, the marriage is valid; for in this case, the fear is not considered to be one that falls upon a steadfast man... However, I would qualify this to be understood when that displeasure of the father or husband will not last long, but there is hope for future reconciliation; for if she feared a probable and lasting displeasure, and that she would always have a father or husband who is very angry and indignant towards her, and that she would constantly be subjected to that

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disobedience, I would believe that this is a fear that falls upon a steadfast man. For which man, steadfast and prudent, would not consider it a grave evil to always have an angry father or husband, or another from whom he depends, and with whom he is always to be associated, before his eyes?" Saint Alphonsus, *Theologia Moralis*, book VI, 1056, in response to the question: "Whether reverential fear is sufficient to invalidate a marriage," answers: "To the question, the first opinion, which is held... states that pure reverential fear, if it is the principal cause of the marriage, invalidates it. The second opinion, which is common and accepted, states that pure reverence is not sufficient, but that it is necessary to add either beatings or threats, or the fear of some grave evil, such as hatred, lasting indignation, etc." Schmalzgrueber, book 1 of the *Decretalium*, title XL, number 5: "It must be said that reverential fear alone is not considered to be a just and sufficient reason to invalidate or rescind acts performed under it, unless other supporting factors are present, such as harshness of expression, indignation, bad treatment, importunate and repeated requests, etc." Reiffenstuel, in book I of the *Decretum*, title XL, number 95, establishes this proposition: "Although reverence towards parents and others...

[*Latin ed. p. 671*]

PARISIAN. 671. Greater age, or reverential fear, alone is not sufficient to invalidate, for example, a marriage celebrated by children, nor to rescind another contract; however, it is otherwise when cruelty, or grave threats concerning parents or elders, are added, with respect to their children or dependents, unless they obey, or at least, when persistent and importunate requests are made. Then, he proves the first part of the proposition, that reverential fear alone is not sufficient; then the second, that reverential fear is sufficient, when added to cruelty or grave threats from parents; and finally, the third, that reverential fear is sufficient, when added to importunate and insistent requests from parents, thus demonstrating: "The third part, which speaks of importunate requests (by these, we understand not any requests, but only those which are most insistent and frequently repeated), together with reverential fear, is proven from this. For, on the one hand, such importunate requests from parents or elders, repeatedly made, greatly urge, vex, and sometimes even oppress those subject to them, as can be inferred from Judges, chapter XVI, where it is read that such a thing even happened to the very strong Samson. Therefore, in the Extravagant of Pope John XXII, § 1, it is noted that sometimes, the impropriety of importunate requests from the Romans Pontiffs is known not to have been obtained, but rather extorted, etc. Where the Glossa, at the word 'extorted,' says: 'That is, obtained unwillingly through such importunity.' On the other hand, the reverence due to elders and the fear of offending them greatly prevails. Therefore, it is not undeservedly that both of these causes, joined together, are considered to produce a fear that weakens a man's resolve." Thus also Engel in lib.

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I Decretalium tit. 1, § F, n. 4, Clericatus, De matrimonio decis. 37. n. 24, D'Annibale, Summula vol. I, § 138, not. 14, Gasparri, Tractatus canonicus de matr. n. 8lo, etc. Those who approach the second part of the demonstration argue that Margaret married Augustus out of reverential fear, invalidating the marriage. First, they observe that the woman was highly esteemed by all for her religion and nobility of spirit; her deposition...

[*Latin ed. p. 672*]

672. PARISIAN. The eloquence of her speech, the appropriateness of the accompanying phrases, the gentleness of her spirit, and a certain flavor of sincerity, all indicate truth and accord with what she says. Furthermore, regarding the substance of her testimony, which her mother, the Lord of Belvalle, and other witnesses, among whom are venerable matrons, and men of standing in age and condition, attest to through their own accounts, there is absolutely no suspicion of collusion whatsoever. Given this, it appears from what has been said above, as the defenders of the woman argue, that to demonstrate the nullity of this marriage due to a lack of due reverence, it is sufficient to demonstrate these four points: 1. That Margaret always hated the marriage to Augustus; 2. That her mother firmly and perseveringly desired it; 3. That the mother, in order to obtain the daughter's consent, used importunate, insistent, and most insistent persuasions and prayers, and employed insulting words, and displayed a haughty and unyielding demeanor; 4. Finally, that Margaret did not freely consent to the marriage, but submitted to the imperious will of her mother, who was steadfast in her purpose, because the girl, being exceedingly timid and obedient, and foreseeing that her mother's pressure would last for a long time, or perhaps always, was unable to resist. Briefly, concerning each point. It is, say her defenders, evident from the very acts that Margaret hated this marriage. But, the orators note, if Margaret was so deeply opposed to this marriage, her mother desired it, considering the happiness of her daughter and the circumstances of the family. Furthermore, the lawyers contend that it is certain that the mother used importunate, insistent, and most insistent prayers, insulting words, and displayed a haughty and unyielding demeanor in order to obtain Margaret's consent. Finally, the advocates for the nullity of the marriage argue that Margaret entered into the marriage in order to please her mother, because the girl was so timid and obedient, and foresaw that this pressure would last for a long time, or perhaps always. Indeed, Margaret was 14 years of age when the marriage was proposed to her; she was 16 years of age when the marriage was celebrated.

[*Latin ed. p. 673*]

PARIS. 673. She was timid and exceedingly obedient to her parents, as many testify. This young woman, observe the lawyers, was so timid and obedient to her mother, that, foreseeing that her mother would insist on

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the marriage, she entered into the marriage so as not to offend her mother, nor to displease her. As demonstrated, the lawyers maintain, the marriage was truly contracted out of reverential fear, with those circumstances that render fear an impediment to the marriage. And this conclusive argument is confirmed by what all the witnesses affirm, namely, that the mother compelled the daughter to this marriage; and that the daughter would never have entered into these nuptials without this maternal coercion. The arguments presented, the lawyers wish to be irrefutably confirmed, if the circumstances preceding, accompanying, and following the marriage are carefully considered. Before the marriage, Margaret gave clear signs of her aversion to August. During the very ceremony of the marriage, the defenders observe, there were no signs lacking of extraordinary sadness and opposition. Nor, say Margaret's advocates, did these signs of opposition cease after the marriage.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The defender of the bond, in turn, begins to point out how not one of the witnesses is free from partiality, and how only those witnesses from the side of the plaintiff were dismissed by the judge. Therefore, in these circumstances, the truth does not spring forth from its own source, but the defender of the bond is forced to gather it from those narratives against the marriage, with diligent study, from which only those truths are revealed that cannot be concealed in any way, or, moreover, contrary to the intention of the witnesses, furtively escape from their mouths. Above all, it is certain, says the defender, that the marriage between Margaret and August was entered into with solemn rites and with a large gathering present, and that Margaret, at the age of seventeen years, was already of mature age, and capable of deliberation.

[*Latin ed. p. 674*]

674. The Parisian [woman] had, it is alleged, been living with a man for two years before the marriage was celebrated. The consequence of such an undeniable fact in law, the advocate notes, is taught to us by the Holy Rota, in decision 149, § 1, before Ratto: "When it is a question of a marriage contracted before a priest and two witnesses, according to the form prescribed by the Sacred Council of Trent in session 24, chapter 1, concerning reforms in marriage, and in the very act of celebration, there has been a free consent of both parties, all presumption must be in favor of the validity of that marriage, and no consideration must be given to objections raised, unless those objections are so compelling and effective that they immediately and conclusively demonstrate a pretense of nullity, whether arising from a lack of free consent, or from another invalidating cause." The defender also recalls that the Instruction issued by the Sacred Congregation of the Holy Office, on June 20, 1883, in article 3, concerning impediments, and § 39, states: "In this matter, the judge must know that marriage is, by its

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very nature, a solemn and public act, which must always be considered valid, unless evident reasons demonstrate its nullity. Therefore, every effort and diligence must be made to gather these reasons, but judgment against marriage must never be pronounced, unless the totality of these reasons excludes all reasonable doubt of the existence of an impediment." The advocate, proceeding further, observes how, after the marriage, Margaret embarked on a pleasurable journey with her husband and indulged in conjugal relations for eight years. And if, after eight years from the marriage, Margaret separated from her husband, she did not, in fact, separate, because the alleged cause of the separation, namely, the birth of a child, had ceased; for the mother was alive and is alive: indeed, she herself fostered this present dispute. Without ambiguity, Margaret confesses: "I finally left him [Augustum] because he was becoming more and more unpleasant. He had squandered my fortune." Regarding the reasons why Margaret bid farewell to her husband: "Because he was becoming unpleasant and had squandered his fortune." Where, then, is the much-vaunted reverential fear, the advocate exclaims.

[*Latin ed. p. 675*]

PARISIAN. 675. Was the tutor present? The reverential fear, which in reality scarcely exists, was present, although it had not previously been considered by Margaret. For it is well known that lay judges readily annul marriages, which they suspect may be invalid for any reason. Therefore, Margaret, since the year 1886, when she separated from her husband, had declared that her marriage would be considered invalid by the secular authorities, if she could bring forth reverential fear. But Margaret did not even consider the possibility of an annulment, but rather requested a separation of property. From the year 1887 to the year 1893, Margaret received from August a large sum of money, amounting to 100,000 livres. On May 17, 1893, Margaret presented a petition to the Most Reverend Archbishop of Paris, requesting that her marriage, contracted under reverential fear, be declared null and void. Furthermore, the defender of the sacrament objects that, in the present case, the reverential fear has only been asserted in general terms before the judge. The testimony of Anne Schneider is considered suspicious by the defense, because she is not a Catholic, and it is unknown whether she speaks from her own knowledge or from hearsay. Moreover, the prosecutor continues, the assertion of "fear" is a fabrication. Therefore, let Anne present the facts: let her recount what she has done, what the mother has done, to silence the daughter; let her reveal the disagreements between Margaret and her mother, and also between Margaret and her parents: for it is said that in confession, Margaret's father told August that he did not approve. Let Anne indicate, if there were any witnesses besides herself, the times, places, and other circumstances. Until Anne is content to assert "the mother silenced her daughter," her story must be rejected.

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Fear, whether common or reverential, the defender of the bond argues, is not conceived without acts of beatings, cruelties, or threats, if it is common; or of importunate requests and persuasions, if it is reverential. But in the present case, no one has seen Margaret's mother importune her daughter.

[*Latin ed. p. 676*]

676. PARISIEN. [He] either frightens or persuades. Therefore, if it were to be maintained that this applies to the case of reverential fear, it would be easier to prove the existence of fear. As the orator says, "For fear, whether common or reverential, to be considered serious and therefore to dissolve a marriage, it must be based on five conditions, which Sabellius accurately sets forth in his *Summa, Diversa, Tractatus*, § 3: 'First, that the evil feared must be grave; Second, that the estimation of the evil must be strong, that is, that the one fearing does not believe the evil to be imminent to him lightly or vainly, but rather probably; Third, that the one who instills fear must be capable of carrying out his threats, since a man of constant and strong character should not be frightened or terrified by any threats where there is no fear; Fourth, that he must be accustomed to carrying out his threats; otherwise, if he is a boastful man and easily abandons his anger; Fifth, that the one fearing must not be able to easily avert the evils that are imminent to him; for if he could remedy the situation in another way, there is no just cause for fear.' And Schmalzgrueber, in *Jus. Can. part. 5, tit. 40, n. 3*, writes: 'From this it follows that any fear which is not endowed with these five conditions is not a serious fear with respect to the one experiencing it.' Now, the defender, in the case of reverential fear, compares it with the aforementioned five conditions, and relates it to the first; he argues that no grave evil was threatening Margaret if she had refused the marriage, and in fact, she feared no evil herself, but rather displeased her mother. Certainly, Mary Magdalene, the actress's sister, when asked by her: "Why do you dislike (Augustum)?" Margaret replied: "It is only to please my mother." Margaret Filippi also testifies: "It was to please her mother, who was very keen on this marriage, that she allowed herself to be persuaded to accept it." There is no doubt, notes the guardian of the sacrament, that this first condition, of a grave evil, also applies in the case of reverential fear. For fear, whatever name it may be called by, is defined by Paul in 1 Timothy 1 § 1 ff. as "a trembling of the mind, caused by an imminent or future danger."

[*Latin ed. p. 677*]

PARISIAN. 77. The apprehension of the mind cannot arise without the conception of a serious impending evil. Therefore, Sánchez de matr., book 4, disputation 6, number 14, resolves: "If a daughter enters into marriage without prior threats, only out of the fear of incurring the father's displeasure, it is considered valid; for fear is not considered to be a coercion upon a man... However, this must be understood in such a way that it is un-

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derstood that that displeasure of the father will not last long, but there is hope for future reconciliation; for if she feared that the father's displeasure would be long-lasting and that she would always be with a father... very angry and indignant, and that they would widely believe that her disobedience was a constant and unwavering fear, then that fear would be considered a coercion upon a man. For who is there among constant and prudent men who would not consider it a grave evil to always have an offended father before their eyes, with whom they will always be together?" But in the present case, the speaker says, neither was the mother's displeasure long-lasting, nor was it brief, but it was entirely absent; indeed, the mother was more indulgent to her daughter than usual. Regarding this, Maria Milliasson states: "Madame did not exert violent pressure on her daughter; rather, she flattered her daughter and sought to convince her that she would be happy with this marriage." And Countess Berthier states: "The mother, who always spoiled her daughter, spoiled her even more at that time, in order to force her consent." Another condition is that one must not believe that a serious evil is about to befall him in vain or lightly, but rather probably. But, the advocate of the marriage says, there was absolutely no reason for Margaret to be afraid, in her confession. Nor, the defender continues, does the third condition apply, which requires that the one who instills fear be able to carry out threats. What evil could the mother inflict upon her daughter, when the father was alive, who did not at all desire such a marriage? Much less, the advocate of the marriage maintains, is the fourth condition fulfilled, which requires that the one who instills fear be accustomed to carrying out threats. No witness is found who has ever seen the mother angry, indignant, or scornful towards her daughter, or who has ever seen her widely reproach her for that disobedience.

[*Latin ed. p. 678*]

678. PARISIEN. The fifth condition is that the one who fears should not be easily exposed to the evils that threaten him. However, this final condition is not verified in the case at hand. It is certainly true that Margaret revealed her situation to Auguste, who stated: "I would not have married her if I had been able to perceive from her side any aversion towards me, or even any pressure whatsoever." But, the defender of the bond exclaims, all that is extraordinary, prodigious, and contradictory is present in this case. For, although the marriage contract lasted for two years, and although all of the family, and especially the father, were prepared to assist Margaret, if Auguste had clearly stated that he did not wish to marry, Margaret nevertheless revealed nothing of this to anyone, not even to her father. However, on January 11, 1894, the advocate for the indissolubility, urged by the judge to provide an explanation for the 100,000 livres that Margaret promised to Auguste before obtaining the divorce decree, and which she subsequently paid, responded: "At the moment when the question of requesting the

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divorce arose, Mr. Auguste pointed out that he would find himself in a difficult, false situation, since he could no longer count on the situation, and it was then that we believed it necessary to offer him the sum of one hundred thousand francs." The orator contends that Margaret paid Auguste a large sum, not out of generosity, but because of a burdensome contract. For it is indeed proven that a smaller sum was first offered to Auguste, but that Auguste refused to accept a sum less than 100,000 livres, which clearly demonstrates not generosity, but a burdensome contract. O, most virtuous Margaret, exclaims the defender! Did you not separate from Auguste in 1886, and obtain a separation of property? After six or seven years, when Auguste has become accustomed to living without your money, did you then, out of pity, offer 100,000 livres to Auguste, who rejected a smaller sum? With these considerations, the purpose [of the argument] is being undermined.

[*Latin ed. p. 679*]

PARIS. 679. A Question: Whether the opinion of the Parisian Tribunal should be confirmed or rejected in this case.

RESOLUTION. The Sacred Congregation of Councils, after deliberation on the 7th of September, 1895, judged it fitting to respond: From the presented information, it does not appear that the marriage is null.

FROM WHICH THE FOLLOWING ARE DERIVED:

I. When formal proof of a true, reverential fear is lacking, the marriage remains valid in its force and strength.

II. A presumption of validity is to be maintained for a marriage, whenever it has been celebrated according to the form prescribed by Trent, before a parish priest and two witnesses, and in the very act of celebration, there has intervened the free consent of both parties.

III. Exceptions raised against the validity of a lawfully celebrated marriage are to be considered as null, unless they are so compelling and effective that they immediately demonstrate the alleged nullity, whether it arises from a lack of free consent, or from another invalidating cause.

IV. Marriage is, by its very nature, a solemn and public act, which should always be considered valid, unless evident reasons clearly demonstrate its nullity.

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF SAINT DEODATUS, CONCERNING THE FACULTY OF HEARING CONFESSIONS AND PREACHING. Dated the 13th of February, 1896.

SUMMARY OF THE FACTS. By decree of the 28th of June, 1891, the Bishop of Saint Deodatus appointed a priest, Marchai, to the parish of Saint

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Apri in Mattineuria, within his diocese. However, the Regular Canons of the Lateran Palace judged this decree to be...

[*Latin ed. p. 680*]

680 FROM the Sacred Congregation of Bishops and Regular Canons, deriving from a convention initiated between the Bishop and the superiors of the Regular Canons in the year 1878, and approved by the Sacred Congregation for Eastern Churches and Regular Canons in the same year, through the appeal of their General Abbot to the same Sacred Congregation, the matter was presented, and after discussion in the General Assembly on March 9, 1894, under the question: "Whether the Episcopal decree of June 18, 1891, is valid in this case?" the Fathers responded: "No" (1). This decision was also confirmed in the Plenary Congregation of August 24 of the same year. Following this decision, the General Abbot of the Regular Canons of the Lateran Palace immediately petitioned the Bishop regarding the practical manner of implementing it, meanwhile requesting that the Regular Canons of the Lateran Palace residing in Mattineuria be restored to the faculty of hearing confessions and preaching. The Bishop, resisting this petition, the General Abbot presented the matter to the Sacred Congregation through a written submission, in which, while declaring that, for the present, news was being sent to the parish of Mattineuria regarding the obstacle existing on the part of the Government and the local Municipality, he nevertheless urged the requested restoration of the faculty, which, he asserted, his religious had been unjustly deprived of. In response, the Bishop, in his written reply to the Sacred Congregation dated March 25, 1895, after stating that the reservation of the right of appeal by the religious to the parish of Mattineuria was a means of perpetrating a serious disturbance, maintained that the requested restoration could not be admitted, neither in law nor in fact. Not in law, because the faculty granted to the Regular Canons of the Lateran Palace of hearing confessions and preaching was dependent on the parochial office, having been granted without any prior examination and through a simple approval for the parish; therefore, with the cessation of that office, the attached faculty also ceased. Not in fact, because if the Regular Canons of the Lateran Palace were restored, they would exert all their efforts to regain the parish, conciliating the favor of the people who were averse to them, and thus scandals and disputes could arise, given the opposition of the Municipality and the Government. (1) This case was related and discussed in Volume XXVI, page 624.

[*Latin ed. p. 681*]

From the Sacred Congregations, Epistolary and Regulatory Decrees, 681. A Synoptic Discussion: OBSERVATIONS CONCERNING THE OFFICE. The Most Reverend Advocate, after careful consideration, noted that, according to the law, it is established as a general principle that an

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Ordinary cannot, without distinction, deny to all religious of his diocese, or to all religious of a particular Institute, the faculty of hearing confessions and preaching within the diocese; thus, it is stated by Cardinal de Luca in *De Iurisdictione*, section 32, number 10. And therefore, just as if a Bishop were to deny to all religious the faculty of hearing confessions or preaching, they could justly appeal, and, through recourse to higher authorities, compel him to grant them such a faculty, as is stated by Giraldi in *Ius Pontificium*, part 1, book 1, Decretal, title 31, concerning the office of the Ordinary judge, and more explicitly by Lucidi in *De Visitatione SS. L. L.*, volume 2, chapter 4, section 4. Nor can Bishops, without the consultation of the Apostolic See, deprive all members of a single religious community, who have already been approved by themselves or their predecessors, of the faculty of hearing confessions, although, for a reasonable cause, it is permissible to suspend some of them, as is stated in the aforementioned Constitution of Pope Clement X. Regarding the argument presented by the Bishop of St. Deodatus, that this faculty, being subordinate to the exercise of the parochial office, ceased by the loss of that office, the Most Reverend Advocate responded that the Regular Canons of the Lateran Palace were unjustly and violently removed from the parish, as is evident from the aforementioned decision of the Sacred Congregation, which ordered that the aforementioned Regular Canons be restored to their parochial rights; therefore, the alleged fact, being unjust and violent, could not give rise to the deprivation of the faculty of hearing confessions and preaching. As for the reason for the fact, alleged by the Bishop, namely that, with the granting of this faculty, the Regular Canons of the Lateran Palace, having lost the favor of the people due to their aversion, could regain it through various means, favoring the people of Matti-.

[*Latin ed. p. 682*]

682 FROM THE DECREES OF THE HOLY CONGREGATION AND THE RULES: The superiors of the Neurians are to agree to this, while the Secular Administrator will have nothing left to retain this favor; and even if this is admitted, whether this is a sufficient reason for denying the requested reinstatement, it was referred for resolution to the judgment and prudence of the Most Reverend Fathers. After these discussions, concerning the question: Whether the Bishop of St. Deodatus is obligated to reinstate the Canons Regular of the Lateran Palace, residing in Maltineuria, in the faculty of hearing confessions and preaching in his diocese. RESOLUTION. The Sacred Congregation of Bishops and Regulars, after discussing the question on February 13, 1896, decided to respond affirmatively. FROM THE ABOVE, IT IS UNDERSTOOD THAT: I. Once a faculty has been granted by the Bishop for hearing confessions or preaching, this cannot be revoked arbitrarily, because such a deprivation requires a proportionate cause. Indeed, in the case of revoking

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the aforementioned faculty from the Canons Regular of the Lateran Palace, no other reason was apparent than the fact of the violent dispossession by the parish of Mattineuria, which was not lawful. II. Although the Bishop can, for a just cause, refuse to grant the faculty of hearing confessions or to withdraw it from religious individuals, according to the Council of Trent, Session 23, De Reformatione, Chapter 15, nevertheless, when it is a matter of all religious, or of a single community, he cannot do so without consulting the Holy See, due to the danger of scandal, as is also evident from the following decree of the Sacred Congregation of Bishops and Regulars, dated November 20, 1615. Although, repeatedly and frequently, adhering to the apostolic constitutions, the local ordinaries have decreed and declared that they should not, nor ought to, deprive an entire community of religious of the faculty of hearing sacramental confessions, the Sacred Congregation itself has ordered the restoration of what had been taken away, without scandal and for the good of souls.

[*Latin ed. p. 683*]

From the Sacred Congregation's Epistolary and Regulatory Decrees, 683, in order to prevent harm, after mature deliberation concerning all matters of scandal, We decree and ordain that Archbishops, Bishops... cannot, in any way, deprive Regular Confessors of the faculty to hear confessions, even if they are members of the same Convent. From a Brief issued by the Most Holy Pope Leo XIII, by which more privileges are granted to those who travel to the holy places of Palestine. Following in the footsteps of Our Predecessors, the Roman Pontiffs, who constantly encouraged pious pilgrimages to the holy places of Palestine and granted indulgences, We have, since the year 1882, undertaken the care of expiatory pilgrimages, entrusted to the Fathers of the Augustinian Order of the Assumption, and have promoted them with worthy commendations; and through Our letters, dated March 6th, We have adorned them with certain special spiritual graces. The result has fully met Our expectations. In the following years, devotion to the places hallowed by the Divine Blood has been aroused and increased, especially in France; Bishops, priests, and laypeople, thousands of Christians hastened to participate in these pilgrimages; by their example, the faithful Christians living in the East have been strengthened in the faith; finally, this wonderful agreement between the East and the West filled Our heart with great joy and raised Our hopes. And, with the support and auspices of Our beloved son, Francis Picard, Superior General of the Augustinians of the Assumption, who for fifteen years has admirably directed these expiatory pilgrimages, a hostel of Our Lady has been established in Jerusalem, approved by both ecclesiastical and civil authorities, to receive pilgrims; there, a pious house of studies has been opened for the religious of the Assumption; the Eucharist was celebrated by the Convent with many Patriarchs and dignitaries present, both of the Latin rite and of the Eastern

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rite; and, on that most auspicious occasion, the first stone of the Church of Our Lady of the Gauls was laid by the Cardinal Legate of the Apostolic See; and finally, that...

[*Latin ed. p. 684*]

684. The temple, recently completed and a structure of noble design, serves as a place for the aforementioned works of penance, pilgrimages, and prayers, as well as for the pious Association, canonically established there, for the proper offering of suffrage for the souls of faithful deceased from both the Eastern and Western Churches, who are detained in purgatory by fire. Indeed, the General Superior of the Augustinians of the Assumption humbly requested that We grant indulgences, each year, through the aforementioned letters of Ours, to those who undertake these pilgrimages, and that We add certain privileges out of Apostolic benevolence, so that such works of fruitful piety may, with the Lord's favor, experience greater growth, and especially that the prayers offered for the unity of the Churches, according to Our intention, may bear more abundant fruit for the salvation of souls. Therefore, We have readily agreed to these pious requests. And so, We, with a willing heart, grant that the religious fathers of the Assumption, to whom the administration of these pilgrimages is entrusted, as well as the faithful who undertake this journey in the exercise of piety, obedience, mortification, and self-denial, and also in the spirit of charity and prayer, may be embraced with special benevolence, and that those among them who, through some fault, may have incurred excommunication, interdict, or other ecclesiastical sentences, censures, or penalties of any kind, be absolved and considered absolved for this very reason, by Our Apostolic authority, according to the will of the Apostolic See. Namely, We grant and concede to all and each of the faithful who now and in the future undertake this expiatory pilgrimage each year, and who have professed due obedience to the Moderator at the beginning of the journey, a plenary indulgence for the day of departure, and for each day chosen during the pilgrimage, provided that they have duly confessed their sins and received Holy Communion, and that for a time, according to the mind of the Roman Pontiff, they pray for the eradication of heresies, and for the needs and exaltation of the Holy Church. We wish to add these conditions to all other plenary indulgences granted below, which We permit to be converted into suffrage for all the faithful who have piously departed this life. And also, for those who, while detained at home, have been assisted by others sent by them, or through alms, or in another way, and for those who...

[*Latin ed. p. 685*]

From the Secret Briefs, 685: Joined in spirit with pilgrimages, certain acts of mortification or piety are daily performed, for the duration of the respective pilgrimage, such as some form of abstinence, attendance at Mass, the

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practice of the Stations of the Cross, recitation of the Rosary, or the seven penitential Psalms, or any of the smaller Offices approved, we grant the opportunity to gain a plenary Indulgence at will, on any of the feast days occurring during the duration of the respective pilgrimage. Furthermore, we decree that, for the duration of these pilgrimages, it may be permitted daily on the ship, with due observance of the prescribed regulations, to celebrate the sacred rites, and to distribute Holy Communion to those who request it. We likewise grant the authority to the Moderator of each pilgrimage, and to certain priests approved by him, to hear the confessions of the pilgrims. However, for women, except for those who are sick and bedridden, we wish that a screen be used, placed in a suitable location, which will separate the priest from the penitent. And so that the pilgrims may not be deprived of the benefit of the Stations of the Cross, either on the ship or where they are not canonically erected, we grant that they may gain all the Indulgences attached to this practice, if they perform it before a portable Cross presented by a superior. Moreover, when they arrive at the holy places, we grant that the pilgrims may obtain all the Indulgences they would have gained had they attended the principal feast of each Sanctuary they visit. If, however, some of these Sanctuaries are so crowded that they cannot accommodate all pilgrims, or if priests are not permitted to administer the Sacraments to all pilgrims there, we decree that the Moderator of the respective pilgrimage shall consult with the Patriarch of Jerusalem, and, provided that local customs and the disposition of the inhabitants permit this without causing offense, we, by our Apostolic authority, grant the power, by the present document, to grant permission for Masses to be celebrated outdoors there, with due observance of the prescribed regulations, and for the Eucharist to be distributed to the pilgrims, so that, through these means, the Indulgences attached to the visit to that Sanctuary may be acquired as if the Sanctuary had truly been visited. Finally, by the fullness of our Apostolic power, present and perpetual, in the Sanctuary mentioned above, erected in Jerusalem, dedicated to Our Lady of the Gallicans, attached to the Tomb of the Virgin, which is held by the Schismatics, we grant a plenary Indulgence.

[*Latin ed. p. 686*]

686 FROM THE SECRETARY'S OFFICE OF BREVES, it cannot be visited by pious pilgrims. We grant and concede this, decreeing that these present letters shall be firm, valid, and efficacious, and shall have their full and complete effect, and shall fully suffice for those to whom they pertain, and may pertain in the future, in all respects, so that in the aforementioned matters, they ought to be judged and decided by any ordinary or delegated judges, and shall be void and null if, by anyone, through any authority, knowingly or unknowingly, anything should happen to be attempted contrary to this. Notwithstanding Our own regulations and those of the Apostolic

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Chancery concerning the granting of indulgencies of this kind, and other Constitutions and Apostolic Ordinances, and all other contrary things. We wish that full faith be given to these present letters, even to copies or printed examples thereof, signed by the hand of a public Notary and sealed with the seal of a person constituted in ecclesiastical dignity, in the same manner as if the present letters themselves were exhibited or shown. Given in Rome, at Saint Peter's, under the Fisherman's ring, on the eighteenth day of April, in the year 1896, in the nineteenth year of Our Pontificate. C. CARD. DE. RUGGIERO L. * S. FROM THE 3rd CONGREGATION FOR RITES, NEAPLES. Concerning the Beatification and Canonization of the Venerable Servant of God, Mary Crucified of the Wounds of Our Lord Jesus Christ, of the Order of the Discalced Minor Friars, of the Province of Saint Peter of Alcantara, Naples. ON THE QUESTION: Whether it is established that she possessed the Theological Virtues of Faith, Hope, and Charity in God and in her Neighbor, as well as the Cardinal Virtues of Prudence, Justice, Fortitude, and Temperance, and their corresponding virtues, in a heroic degree, in the case and for the purpose under consideration? By the providence of God, it happened that, in times clearly hostile to virtue, a most excellent aid to religion was provided, and although published in Naples in the year 1682, in a modest and obscure manner, the Venerable Mary Crucified nevertheless aroused the admiration of all for her outstanding piety. She followed the Apostle in a particular way, striving to be a virgin dedicated solely to God. From the very beginning of her life,

[*Latin ed. p. 687*]

From the Sacred Ritual, number 687, she was universally called "holy," because of her innocent conduct. And after seven years had passed, she adhered most closely to the spirit of charity, striving with remarkable diligence to acquire and practice every virtue. Although she was unable to enter a monastery and be bound by the solemn law of enclosure, she endeavored to live a life of holiness, according to the example of those who were completely dedicated to it; and, with the encouragement and urging of Christ, she became so renowned through the third group of Alcantarians, by reason of her office and duties, that she surpassed even the most illustrious examples, namely, the venerable Mary Anne of Jesus and the blessed Francisca of the Five Wounds, and diligently devoted herself to imitating them. Therefore, she acquired such great renown among all, for the virtues of all kinds, and especially for the humility of her spirit, the angelic purity of her manners, and the fervent love for Jesus, whom she called her delight, that she deserved the highest praise. It happened that citizens, and many others from afar, recognized her outstanding dignity, and especially the sacred prelates and priests, who were accustomed to hearing her confessions, sought her out, considering it an honor and a comfort to speak with her; the entire city of Naples constantly flocked to her,

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seeking her counsel in matters in which they were perplexed, especially to implore her intercession. And everyone proclaimed "Mary Crucified," as a deserved and immortal light, whose fruits are found in all goodness and justice and truth. Indeed, the extent of her virtue was such that, when public affairs in Europe were restored, she was often held in high esteem, and after his return from a five-year exile to the city, Pope Pius VII, not without reason, considered that she had happily brought about this event through fervent prayers offered to God, and he did not hesitate to enrich her with a sacred relic. For in the measure in which she excelled in holiness, so much did it seem that heavenly graces were bestowed upon her, with miracles accomplished through her prayers, and prophecies fulfilled, by which, with the help of the Divine Power, which chooses the weak of the world to confound the strong, she foretold future events. As for the commendation of her piety, which she received during her lifetime, the same is confirmed by undeniable testimonies, that after she had lived for forty-four years, on the seventeenth of the calends of January, she drew deeper roots, and after death, gained greater strength.

[*Latin ed. p. 688*]

688 Driven by the rites of the world and intent on heavenly things, she, whose heart was wholly consumed by charity, found a blessed end in Christ and rested. It was said that, elevated by the great desire of all, she had presented to heaven the flower of a most virtuous life, without any blemish, and that she had never ceased to pray to God, with the addition of the angels, for those whom she had formerly embraced with love on earth. And, undoubtedly moved by a more vivid remembrance, a few years after her death, the praises of this handmaid of God were more widely recalled, and the cause of her beatification was presented to the Apostolic See, so that nothing might hinder or obscure it; the prelates and members of the Sacred College never neglected this. Therefore, in order to examine the virtues of Saint Mary of the Cross, which she had attained to a heroic degree, the Holy Roman Church undertook a threefold discussion of this important matter. First, an assembly was held in the preparatory meeting before the indicated hall, by Cardinal Anthony Panebianco, Relator of this cause, on the fifth of July, in the year 1882; then, in the preparatory congregation convened at the Apostolic Palace in the Vatican on the ninth of July, in the year 1891; and finally, before His Holiness Pope Leo XIII in the general congregation, on the sixth of March of this present year, 1896, in which, after the Most Reverend Cardinal Raphael Monaco La Valletta had been removed from the position of Promoter of the Cause due to his death, the Most Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Sacred Roman College, raised the question: Whether it is established that the Venerable Servant of God, Mary of the Cross, in the heroic degree, in the case and to the extent that it is being considered, possessed

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the Theological Virtues of Faith, Hope, and Charity in God and in her neighbor; and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, and their corresponding virtues? And all that the Reverend Cardinals and other members of the Sacred Roman College, as consultants, presented in their votes, was received by the Most Blessed Father, who gladly acknowledged that the venerable and humble handmaid, Mary of the Cross, had exhibited a wonderful example of all virtues. He said that he believed that such an example, if it was so salutary to so many during the calamitous time in which she lived, would be even more beneficial to our miserable age, especially with the increase of her heavenly patronage. But, although he foretold well of the cause, meanwhile...

[*Latin ed. p. 689*]

From the Sacred Congregation of Rites, decree 689, the definitive judgment, with God's blessing, was reserved for its proper time. But on this most joyous day, during the solemnity of the Ascension of Christ into Heaven, and with His divine inspiration, so that this cause, with the highest testimony of Apostolic authority added, might be advanced with greater speed to its desired outcome, it was judged fitting to confirm the glory of Mary Crucified, who, for the sake of the Catholic cause, desired to obtain new glory for Christ in the Church and in the triumph of Pius VII, even at the cost of her life. Therefore, after the sacred rites were performed in the private chapel, the Most Holy Pontiff entered this Vatican hall, and ordered Cardinal Aloysius Masella, Prefect of the Sacred Congregation, together with Reverend Father Gustavo Persiani, who holds the office of Promoter of the Holy Faith, and myself, the undersigned Secretary, to be summoned to him; and in their presence, desiring to uplift the clergy and the people of Naples, and intending to hear their repeated and fervent prayers, he issued the following decree: It is to be declared that the theological virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and their corresponding virtues, were present in a heroic degree in the venerable Servant of God, Stephen Bellesini, of the Order of the Eremites of Saint Augustine, parish priest in the town of Genestano, in the case and with the effect under consideration. Furthermore, this decree is to be published and recorded in the acts of the Sacred Congregation, on the eve of the Ides of May, in the year 1896.

C. CARD. ALOISIUS MASIELLA, Prefect.

L. S. ALOISIUS TRIPEPI, Secretary.

ROME, or Praenestina, and Trent: Regarding the beatification and canonization of the venerable Servant of God, Stephen Bellesini, of the Order of the Eremites of Saint Augustine, parish priest in the town of Genestano.

CONCERNING THE DOUBT: Does it consist that the theological virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the

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cardinal virtues of Prudence, Justice, Fortitude, and Temperance, and their corresponding virtues, were present in a heroic degree, in the case and with the effect under consideration?

The ardent zeal for Christian perfection which the venerable Stephen Bellesini possessed, so that he might conform to the image of the Son of God, was, from his very youth, singularly evident; and this, indeed, did not diminish with the passage of time, as is evident from the Acts, Volume XXVIII, page 335.

[*Latin ed. p. 690*]

690 From the sacred rites of his time, a man who, through his actions, proved himself most worthy of imitation, pursued his studies with ever-increasing zeal, until the very end of his life. It was therefore fitting that the countless and most excellent virtues cultivated by him should have been praised by all, not only in Trent, where he received this enlightenment, and where, having renounced the vanities of youth and human affairs, he dedicated himself to Christ; and in Bologna, where, having already made solemn vows among the Augustinians, he excelled in literature; but also in Rome, to which he returned with the restoration of peace in Europe, and where, as a master of both doctrine and sanctity, he shone brightly among the novices of the Order; and especially in Geneva, where, having been appointed to a demanding office, and having surpassed the age of sixty by several years, he distinguished himself in a remarkable way. Indeed, Cardinals Acton and Corsi, and not a few other sacred prelates, and others who are eager to set an example, used to call Beilesini by name, comparing him to another Aloysius Gonzaga or Philip Neri; renowned for his innocence, far above many, like the sun among the stars; a martyr to charity, worthy to be compared with the best; and rather a prodigy of virtue than a mere ornament. Furthermore, he inspired such devotion in all that even his adversaries testified, who, although perhaps judging others less harshly, were nevertheless united in the opinion that Stephen had done everything well; that he had not done anything that was even slightly contrary to the will of God; that his love for others was so great that there was nothing above it; and that his justice towards all was so strong that it was capable of healing. Finally, those who were accustomed to his company, especially during the last eleven years of his life, are reminded to imitate his constancy, by which, with a heart full of zeal and with all his strength, he not only instructed the clergy in the proper manner, and guided the young men towards religious perfection, but also inspired the people, who were weary from their labors, to believe; for, although weakened by old age and failing strength, this most valiant athlete of Christ never relinquished his duties; and, drawing strength from this very dedication, he strove with all his might to achieve the best possible results, and he considered nothing of great importance except the glory of God and the salvation of souls. In

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order to serve the good of society and to repel the injuries inflicted upon the Church, he never allowed himself to be moved by the hardships of life or the hatred of the wicked, nor did he heed the threats made against him.

[*Latin ed. p. 691*]

According to the Sacred Ritual, number 691, he desired to be with Christ; and in the meantime, he wished to have as his greatest joy the kindling of heavenly flames in the hearts of others, a fire that should be deservedly ignited in those whom Gregory, called the Great, called Seraphim, whose hearts, converted to fire, shine and burn, and whom neither length, nor depth, nor any other creature could separate from the love of God. Indeed, he completed all these virtues to the highest degree, and he did not hesitate to pour out his life, in a manner of speaking, for the safety of his citizens. For the physician of Genestang, while diligently attending to the infected, day and night, himself contracted the disease, and, having attained the highest reward of a good shepherd, he met a most noble death on the very day on which the solemnities of the purification of the Blessed Virgin Mary, our Lady, are celebrated, on the fourth of February, in the year 1840. Therefore, since, during his mortal life, he had impressed himself in every way with the highest sanctity, it is not surprising that, as soon as he peacefully departed to the heavens, monuments testify that his opinion grew stronger every day regarding the honors to be accorded to him, whose most holy life was so abundantly endowed with many graces, and, as it is said, his remains were consecrated by numerous miracles from God, as if to consecrate his ashes; and that those who would come to visit his tomb would find a new reason to do so, and the rights of the Church would be vindicated in this change of circumstances. And so, three years after the day of his death, the question was raised, and, for this reason, the cause was brought before the Sacred Congregation; and, after repeated investigations, conducted with all due severity, after the preparation of documents and the completion of all other formalities according to the laws, an examination of his virtues was undertaken, which reached the highest peak of heroic virtue, to the great admiration of all. And in order to thoroughly and sufficiently examine these matters, a triple discussion on this subject was held: first, in the preparatory meeting on the third of January, in the year 1890, in Rome, before Cardinal Raphael Monaco of Vaux; to whom the task of examining the cause had been entrusted by the Most Holy Pope; then, in the preparatory meeting held at the Apostolic Palace in the Vatican, with those invited, on the sixth of May, in the year 1894; and finally, in the general meeting held there before the Most Holy Lord, our Pope Leo XIII, on the eve of the Ides of November, in the year 1895; at the last of these meetings, the Most Reverend Lucidus Maria Parocchi, Bishop of Albano

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Laziale, took the place of the deceased Cardinal.

[*Latin ed. p. 692*]

692 FROM THE SACRED CONGREGATION OF RITES, from Monaco in Vaux, a doubt was presented for consideration: Whether the virtues of Faith, Hope, and Charity, both in God and in neighbor, and also the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, together with their associated virtues, are possessed by the Venerable Servant of God, Stephen Bellesini, in the heroic degree, in the case and with regard to the matter under consideration. All those present, the Most Reverend Cardinals and Consultor Fathers, gave their individual votes. His Holiness, although still seeking the assistance of heavenly light to illuminate his mind, nevertheless indicated that the Venerable Bellesini, for whose cause the inquiry was being made, had, by the common judgment of all, surpassed all others as a shining example of every virtue. Therefore, from the deepest conviction within him, and from the responses of others heard, he began to hope that, at the opportune time, it would be his duty to pronounce judgment on the decrees, according to the common will. On the day that arrived, which we commemorate as the most blessed triumph of Christ's ascension into heaven, those who, in the diligent exercise of their pastoral duties, had proven themselves worthy, were to be associated with the heroic life, whose industry, having rekindled the spirits with virtue and for the Church, had sought to renew the triumphs of Jesus Christ with every effort. And, comforting those of the Augustinians who were earnestly praying, the Most Blessed Father perceived a mind free from all doubt and inclined to the judgment that would inflame others to more eagerly follow in the footsteps of this outstanding man, and to present the virtues he had formed through merit, in which all, and especially the officials, should contemplate. Therefore, having completed the sacred ceremony, he entered this Vatican hall, and seated on the pontifical throne, he summoned to himself the Most Reverend Cardinals Caietan Aloysius Masella, Prefect of the Sacred Congregation, and Lucia Maria Parrocchi, and also the Reverend Father Gustav Persiani, who held the office of Promoter of the Holy Faith, and myself, the undersigned Secretary; and, with them present, he solemnly pronounced: "It is established that the virtues of Faith, Hope, and Charity, both in God and in neighbor, and also the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, together with their associated virtues, are possessed by the Venerable Servant of God, Stephen Bellesini, in the heroic degree, in the case and with regard to the matter under consideration." This Decree was ordered to be published and recorded in the acts of the Sacred Congregation, on the eve of the Ides of May, in the year 1896.

CAL CARD. ALOISIUS MASELLA, Prefect of the Sacred Congregation.

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L. iiS. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation.

[*Latin ed. p. 693*]

695 FROM THE SACRED CONGREGATION OF RITUAL: It is inquired whether those Regular clergy who, by reason of preaching, celebrate the Divine Office in various churches, are subject to the obligation of celebrating according to the calendar of the church in which they celebrate. Many Regular clergy, by reason of their vocation and preaching, perform the Sacred Office outside of their own churches throughout the entire season of Lent, during the months of May and October, and also at other times; and for this reason, they have obtained from the Apostolic See the privilege of celebrating Mass according to the calendar of their own Order, when the color is in harmony with the color of the Office of the church in which they celebrate. Furthermore, these same Regular clergy have the privilege that, once granted to them by the Apostolic See, it should not be revoked unless specific mention is made of the aforementioned concession, or at least a clause of revocation of the privilege is included, even deserving of special mention. Hence, the following question was raised: Whether the Regular clergy, of whom mention is made in this case, are included under the decree of the Sacred Congregation of Rites issued on December 9, 1895? The Sacred Congregation of Rites, after hearing the opinion of the undersigned Secretary, and after considering the vote of the Liturgical Commission, having duly deliberated, decided that the answer should be: Affirmative. And thus it declared and decreed. February 8, 1896. CARD. ALOISI-MASELLA, Prefect of the S. R. C. L. S. ALOISIUS TRIPEPI, Secretary of the S. R. C. DECREE, by which, at the request of the Franciscan Fathers of the churches of Assisi, for the purpose of pilgrimage, it is granted to celebrate a votive Mass of St. Francis in the chapel of the Porziuncola, etc. The present Father Provincial, in charge of the Seraphic Order of Friars Minor of the Observance of St. Francis, heeding the requests of both the students of his Province, and of the priests who come from all directions to the famous churches of Assisi for the purpose of pious pilgrimage, has, through humble prayers, obtained from the Most Holy Pope Leo XIII the following privilege: that to each priest it may be permitted to celebrate a votive Mass of the same Saint Confessor in the chapel of the Porziuncola, and also in the other, formerly a bedroom, where the holy Patriarch fell asleep in the Lord, even if the Office of a double rite occurs.

[*Latin ed. p. 694*]

694 FROM THE SACRED CONGREGATION OF RITES. The Sacred Congregation of Rites, by virtue of the special faculties granted to it by the Most Holy Lord, has graciously granted the privilege of celebrating a votive Mass in both chapels, with the exception of the feasts of the first and second class, and the feasts that are to be observed, as well as privileged

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weekdays, vigils, and octaves: observing the rubrics. Contrary opinions notwithstanding. March 21, 1896. C. CARD. ALOISI-MASELLA, Prefect of the S. R. C. L. * S. ALOISIUS TRIPEPI, Secretary. SENIGALLIA. A Doubt Regarding the Exhibition of an Image of the Deceased in the Tomb, During the Funeral Rites. The Rector of a certain parish church within the Diocese of Senigallia, with the consent of his Ordinary, humbly proposed the following doubt to the Sacred Congregation of Rites, namely: Whether the image of the deceased may be exhibited in the coffin or tomb, during the funeral rites, whether the body is present or absent; and, if not, whether such practice can at least be tolerated, where it prevails. And the Sacred Congregation, after careful consideration by the aforementioned Secretary, and with the exquisite opinion of the Liturgical Commission, having carefully considered the matter, decided to respond as follows: Regarding the doubt: Negatively, with respect to the first part; and with respect to the second: Care must be taken to eliminate the abuse. And thus it responded. April 30, 1896. C. CARD. ALOISI-MASELLA, Prefect of the S. R. C. L. * S. ALOISIUS TRIPEPI, Secretary of the S. R. C. AMALFI. A Doubt Regarding Votive Offices, Granted Once a Month. The Most Reverend Lord Henry de Dominicis, Archbishop of Amalfi, at the request of the Editor of the Diocesan Calendar entrusted to him, humbly requested the Sacred Congregation of Rites to resolve the following doubt:

[*Latin ed. p. 695*]

I. Concerning votive Offices, granted once a month, whether they can be performed within the Octave, and whether a dispensation should be requested; and, negatively: Whether it is advisable to request an Indult. II. Whether the Office can be omitted at will, so that the votive Office granted once a month may be recited; and, affirmatively: Whether the Office omitted at will can be transferred to another day? And the Sacred Congregation, after careful consideration of the opinion of the Liturgical Commission, and after accurate deliberation, judged that the following should be answered: To I. Negatively to the first part: No; and to the second. To II. Affirmatively to the first question: Negatively to the second. And thus it was written. On May 8, 1896. C. CARD. ALOISI-MASELLA, S.R.C., Prefect. L. * S. A. TRIPEPI, S.R.C., Secretary. OF THE MINOR ORDERS. A doubt concerning the privilege, formerly granted to the Spanish, of singing the Mass according to the form of the Church of Toledo. The Reverend Provincial Commissary General of the Order of the Minor Friars of Saint Francis in Hispania requested a solution from the Sacred Congregation of Rites to the following doubt: Whether the privilege granted to the Spanish by the Most Holy Pope Pius V, through the Brief of December 17, 1570, entitled "Ad hoc nos Deus," by which it was established and prescribed that in those parts of the Mass which are sung, they should be chanted according to the form received from ancient times in the Kingdom of Hispania, according

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to the Church of Toledo, has been abrogated by more recent prescriptions and declarations of the same Sacred Congregation of Rites? And the Sacred Congregation, after considering the report of the undersigned Secretary, the careful opinion of the Liturgical Commission, and after all matters had been carefully examined, judged that the following should be written: Negatively; and let the Decree issued on July 7, 1894, be given. And thus it was written. On May 8, 1896. C. CARD. ALOISI-MASELLA, S.R.C., Prefect. L. * S. ALOISIUS TRIPEPI, S.R.C., Secretary.

[*Latin ed. p. 696*]

696 FROM THE RITUAL OF GERONA. Doubts concerning the administration of the sacraments of Holy Communion and Extreme Unction to the nuns of Cîteaux, and concerning the translation of their bodies. The Reverend Father Michael Camos, Confessor and Chaplain of the nuns of the Monastery of Châtin, in the City and Diocese of Gerona, humbly requested a solution to the following doubts from the Sacred Congregation of Rites: According to the Cistercian Ritual, Holy Communion and Extreme Unction are to be administered to the sick with an alb and stole, and for their Communion, the chalice must contain as many particles as there are sick persons to be given Communion, and the last particle given must be offered, or cast into the fire, the wine and water of the chalice. The following questions are asked: I. Whether, when a secular priest administers these sacraments to the aforementioned nuns, he is bound to observe the Cistercian Ritual, or whether he should rather use the Roman Ritual? II. If the Cistercian Ritual is to be observed, is it permissible to use a superpellice instead of the alb, and instead of the chalice, a pyx with several particles, according to the Roman Rite? III. Whether, in the translation of the bodies of the nuns from the upper part of the monastery to the lower choir, and in their funeral rites, excluding the Conventual Mass, the Roman Ritual and Missal can be observed, according to the custom in force? And the same Sacred Congregation, with the reference of the undersigned Secretary, and after a careful vote of another of the Consultors of the same Sacred Congregation, considered it fitting to respond to the proposed doubts as follows: To I. A secular priest, as in this case, must use the Roman Ritual. To II. As provided in the first. To III. Affirmative, provided that the law of enclosure is not violated in such translations. And thus it was written. On May 8, 1896. C. CARDINAL ALOISI-MASELLA, S.R.C., Prefect. L. S. ALOISIUS TRIPEPI, S.R.C., Secretary.

[*Latin ed. p. 697*]

FROM THE SACRED CONGREGATION OF RITES, 697 OF THE CITY. Doubts concerning votive offices. Certain editors of the liturgical calendar have requested from the Sacred Congregation of Rites the resolution of the following doubts concerning votive offices, namely: I. In votive offices,

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where they coincide with each other, must the Vespers always be divided according to the specific rubric, or should rather the reason of dignity be considered, according to the decree of Evulgato of August 14, 1894? (1) II. Is the privilege that the General Rubrics of the Breviary grant to the Octaves of the feasts of the Lord and the Blessed Virgin, namely that they yield only to feasts of the second class, while these yield only to feasts of the first class, to be understood of only the Octaves pertaining to primary feasts, or of all Octaves? III. Are the days of the Octaves of the primary feasts, of the Archangels, of St. John the Baptist, of St. Joseph, and of the Ss. Apostles, to be considered more dignified in order of precedence, in comparison with other lesser feasts? And the Sacred Congregation itself, having considered the opinion of the Liturgical Commission, and after mature deliberation, decided to respond as follows: To I and II: Affirmative concerning the first part, negative concerning the second. To III: Affirmative. And thus it responded, on May 22, 1896. L. œ S. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation. VALVEN and SULMONEN. Doubt concerning funeral wreaths to be hung, so that they remain on the walls of the Church. The Most Reverend Lord Tobias Patroni, Bishop of Vaivén and Sulmonen, fearing that, under the guise of piety towards the deceased, abuses might gradually creep in, endangering the decorum of the House of God, humbly requested a resolution from the Sacred Congregation of Rites concerning the following doubt, namely: Is it permissible to hang funeral wreaths on the walls of a Church or public oratory, so that they remain there? (1) You have this decree in Volume XXVII, page 188.

[*Latin ed. p. 698*]

698 From the Sacred Congregation of Rites, and the same Sacred Congregation, in response to the report of the undersigned Secretary, and following the earnest opinion of the Liturgical Commission, and after mature deliberation, it was deemed necessary to respond as follows: Negatively. And thus it responded, on May 22, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Roman Congregation. Regarding Ruthenia: It is decreed that the Misses celebrated in the chapels of Bishops, Seminaries, etc., should follow the local Calendar, and not that of the celebrant. The Most Reverend and Most Reverend Cardinal Christian Ernest Bourret, Bishop of Ruthenia, requested that the Sacred Congregation of Rites provide a solution to the following doubt: Whether, after the general decree issued on December 9, 1895, concerning the Miss conforming to the Office of the Church or of a public Oratory (1), the Misses celebrated in the chapels of Bishops, Seminaries, Colleges, pious Communities, Hospitals, and Prisons, should follow the Calendar of the place, or that of the celebrant. And the Sacred Congregation, with the undersigned Secretary present, after the careful opinion of

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the Liturgical Commission, and after mature examination, deemed it necessary to respond to the proposed doubt as follows: If it is a question of the main chapel, which is to be considered as a public Oratory for the purpose of the aforementioned decree, Affirmative to the first part, Negative to the second part. And thus it responded, on May 22, 1896. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. L. & S. ALOISIUS TRIPEPI, Secretary of the Sacred Roman Congregation. (1) This decree is found on page 438 of this volume.

[*Latin ed. p. 699*]

699 FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH FOR THE INQUISITION: Regarding the retention of a proper name in lists of sects, etc. To the Most Eminent and Reverend Lord Cardinal Satolli, Apostolic Delegate in the United States of America, on January 19, 1896.

Most Eminent and Reverend Lord. It has been inquired whether, apart from any participation by these sects, it is permissible to retain the proper name in the lists of members, and also to continue to pay the aforementioned tax or foreign levy for a time.

This is a very serious question, which the Most Holy Lord has entrusted to this Sacred Congregation to resolve. After mature deliberation, the Sacred Congregation has decided to respond: Generally speaking, it is not permissible; however, it may be tolerated under the following conditions and with the following circumstances present simultaneously:

I. If the sect has, in good faith, given its name, before it became known to them that the society was condemned.

II. If there is no scandal, or if the scandal is removed by a suitable declaration, that it is done so that no one may lose the right to benefits or advantages, or to payments due in foreign currency, by abstaining from any interim communion with the sect and from any intervention, even material, as mentioned above.

III. If a serious loss would result to oneself or to the family from the renunciation.

IV. Finally, if there is no danger of perversion to the individual or to his family on the part of the sectarians, especially in the case of a particular vulnerability or infirmity, or of death, nor is there a danger of performing funeral rites contrary to Catholic customs.

These matters, having been presented to the Most Holy Pope Leo XIII, have been entirely approved and confirmed.

However, the matter is very serious and full of dangers and difficulties, and it concerns not only dioceses but also ecclesiastical provinces. Therefore, the Most Holy Father has ordered that, for the sake of a uniform rule, Your Eminence and your successors in the Apostolic Delegation may

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provide for particular cases.

R. Card. MONACO.

[*Latin ed. p. 700*]

700 APPENDIX VI. EXHIBENS ACTA SEDIS APOST.; QUAE AUT IAMDIU EXARATA SUNT AUT QUAE TEMPESTIVO LATUERUNT EPHEMERIDUM MODERATOREM. S. C. S. Officii 21 Sept. 1842 — Vic. Ap. C he n-s i. Dubium quoad damnum illatum delubris ethnicorum. Utrum Christifidelis qui sciens et volens delubri muros, ianuas, implementa diruit et perdit, atque ab ethnicis ea de causa capitur, debeat vel possit damnum sarcire, saltem ex alio titulo? R. Teneri ad restitutionem, titulo iustitiae. S. C. S. Officii 24 Aug. 1778. Responsa data circa quemdam contractum. Responsa heic relata transmissa sunt ad Vic. Ap. Sutchuen die 8 Sept. 1779. — Vic. Ap. SUTCHUEN. — Est mos in Sutchuen agros aut domos in pignus accipiendi, data rei domino summa pecuniae maiori vel minori, habita ratione redituum agri aut utilitatis domus, ea conditione ut, expleto oppignoraiionis termino, qui vulgo plurium annorum est, rei dominus reddat mutuatori integram pecuniam quam accepit, et ad id coram iudice cogi potest, mutuator vero rem oppigneratam restituat domino, sibique retineat fructus integros, quos durante contractu percepit, etiamsi valore superent laborem, industriam et expensas quae contulit in excolendo agro. Pariter, si de domo agitur, nihil deducit ex summa pecuniae ipsi restituenda, pro solvendo pretio utilitatis, quam ex domo percepit. Interea rei oppigneratae dominus solvit tributa, et alia publica onera in se suscepit. Contractus huiusmodi, sublato titulo lucri cessantis aut damni emergentis, certe usurarius est; verum iam a longo tempore factum est ut dictus contractus inter christianos et infideles obtinuerit, imo et toleratur a missionariis, quibus in mentem non venerat suspicari iniustitiam contractus tam universaliter recepti et legum auctoritate muniti, quique, nullis praecedentibus Vicariis Apostolicis, saltem quod scirent, declamantibus, fere inter mediam partem christianorum publice in usu erat. Nunc, re maturius expensa, vitium detectum est, et statim christianis prohibitum ne postea talem auderent contractum inire.

700 APPENDIX VI. EXHIBITING THE ACTS OF THE APOSTOLIC SEE; WHICH HAVE EITHER ALREADY BEEN PUBLISHED OR WHICH HAVE BEEN KEPT SECRET FOR SOME TIME BY THE MODERATOR OF THE EPHEMERIDES. S. C. S. Office, 21 September 1842 — Vic. Ap. C he n-s i. A Doubt Regarding Damage Inflicted Upon Pagan Temples. Whether a Christian who knowingly and willingly destroys and damages the walls, doors, and implements of a pagan temple, and is apprehended by the pagans for this reason, is obligated or able to compensate for the damage, at least under another title? Answer: He is to be urged to make restitution, under the title of justice. S. C. S. Office, 24 August 1778. Answers Given Regarding a Certain Contract. The answers given here were transmitted

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to the Vic. Ap. Sutchuen on 8 September 1779. — Vic. Ap. SUTCHUEN. — It is customary in Sutchuen to take land or houses as collateral, giving the owner of the property a sum of money, either larger or smaller, taking into account the income of the land or the utility of the house, with the condition that, upon the expiration of the term of the collateral, which is generally several years, the owner of the property returns the entire sum of money to the lender, and he can be compelled to do so before a judge; the lender, for his part, returns the collateral to the owner, and retains the entire fruits that he received during the contract, even if their value exceeds the labor, industry, and expenses that he incurred in cultivating the land. Similarly, if it concerns a house, he deducts nothing from the sum of money to be returned to the owner, for the price of the utility that he received from the house. Meanwhile, the owner of the collateralized property pays taxes and other public burdens. This type of contract, if the title of lost profit or incurred damage is removed, is certainly usurious; but for a long time, this type of contract has been practiced among Christians and non-Christians, and it is even tolerated by missionaries, to whom it had not occurred to suspect the injustice of a contract so universally accepted and supported by law, and which, without any previous complaints from Apostolic Vicars, was in public use among almost half of the Christians. Now, after careful consideration, the defect has been detected, and Christians have been immediately forbidden to enter into such a contract again.

[*Latin ed. p. 701*]

APPENDIX VI. 701 But concerning the execution of the prohibition, not a small amount of discussion has arisen among Christians, and even among the missionaries, regarding the manner in which the prohibition should be enforced, to the point that some have come to believe that contracts of this kind are free from all reproach of usury. But now, no further controversy is raised on this matter among us, although perhaps there are some among the Christians who, imbued with these principles, refuse to obey the commands. Therefore, the difficulty is reduced to two points: First, whether Christians, or even pagans who embrace the faith, are obligated to make restitution of the profits which, in good faith, they have previously received under this contract? — Second, whether, considering the nature of this people, who are entirely immersed in riches and never satisfied, it is safer and more conducive to the salvation of souls to absolutely and without any modification prohibit this contract, or to transform it into a real lease, which in fact does not exist among the Sinenses, but which could easily be introduced, or by some other lawful means by which Christians can obtain a profit, and for this reason would be more readily accepted by them. Concerning the first difficulty, the reason that seems to excuse them from the obligation of restitution is that, generally speaking, they do not appear to have become richer as a result. For the poor, who hold land

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under the title of lease, generally have no other money to sustain their lives than that which they use for the lease, and therefore they are driven to enter into some burdensome contract. They entered into the lease contract because they judged it to be legitimate in good faith, otherwise they would certainly have entered into a contract equally burdensome. Thus, even the wealthy, who in good faith wished to use money to make a legitimate profit, can it be said that the profit is denied to them, because they did not enter into another equally burdensome contract, which they certainly would have entered into if the lease had not been offered? Concerning the second difficulty, it is morally impossible to force most people to engage in commerce: therefore, if this contract is absolutely and without modification abolished, they will either be forced to starve to death, or they will be forced to hold the territories under the title of lease. But 1. in most leases, the same defect is found as in leases; for the owner of the land demands a sum of money from the tenant under the pretext of guaranteeing the fruits which the tenant is obligated to restore, and, because of this sum, which is later fully restored, the tenant is excused from restoring a portion of the fruits, from which he would not be excused if he did not have this money as a guarantee; therefore, it seems that profit is only obtained through a loan at that time. 2. Many, and perhaps the majority, will not be able to buy land.

[*Latin ed. p. 702*]

702 APPENDIX VI. concerning only the leasing; for the sum of money given in a mere lease is far less than that given in a lease with purchase option: hence, when landlords, in disposing of land or houses, prefer to receive money primarily, they will not consent to a mere lease. Having considered these matters, can a contract be altered in this way? Namely: 1. There will be an alienation of the principal sum, so that the landlord will never be able to demand the return of this sum of money, unless he wishes to reclaim the land or house, and no time limit will be assigned for reclaiming the land or house, but the will of the landlord alone will be the rule. 2. Due to this alienation, after deducting expenses, labor, and other costs, the tenant will be able to demand fifteen percent; for the law of the Kingdom ordinarily determines a profit of thirty percent. 3. If there is still a remainder, the tenant will return it to the landlord; the same judgment will apply to a house. Therefore, I earnestly implore that the Holy Congregation deign to define: 1. Whether the lease agreement described above is usurious. 2. Whether, given the circumstances, Christians or their heirs are obligated to make restitution, if they entered into the contract in good faith beforehand. 3. Whether the real tax, as proposed, is permissible and expedient, or whether this lease agreement should at least be prohibited in some other way.

R. To 1. According to what is presented, the prohibition already made by the Most Reverend Apostolic Vicar of Sutchuen concerning lease

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agreements, which, as explained, are illicit, should be commended and confirmed. To 2. No doubt could be resolved in this matter, since each case must be defined according to the particular circumstances of things and times, and according to the particular conditions of the contracts. The Apostolic Vicar considers three points of reason which excuse Christians who have entered into such contracts, or their heirs, from making restitution. The first is the good faith with which they entered into the lease agreement, being completely unaware that it was illicit; the second is that they have not become richer as a result of such contracts; and finally, the good will and intention with which the Chinese are led to enter into some lucrative contract, so that, if they had known that such a lease was prohibited, they would have chosen another equally lucrative contract. However, these points of reason do not seem so firm and solid that it can be absolutely stated that no Christian who has given his money in the aforementioned lease agreement is excused from making restitution; for good faith, in matters which are prohibited by divine or natural law (as usury is certainly prohibited), does not always excuse. Furthermore, good faith and invincible

[*Latin ed. p. 703*]

APPENDIX VI. 705 Perhaps ignorance can sometimes excuse those who enter into a contract [regarding] sin, but not from the obligation to restore the alien property unjustly received: and it cannot be universally and indiscriminately affirmed that they have become richer. For, indeed, one is not made richer merely because he has acquired fields, properties, and other similar things with the money of another, which he did not previously possess; it can indeed happen that, even if someone has not become richer through the acquisition of goods, nevertheless, by living more lavishly, or by being more frugal with his own affairs, he has supported himself and his family with the money of another. And it is clear to everyone that this person has become richer not through the goods of others, but by being frugal with his own and by increasing his own substance. Finally, with regard to the intention and mind of those entering into a contract, although we may wish to consider them to have acted with good intentions in entering into these contracts, nevertheless, besides intention, many other conditions are required by theologians, such as that the contract be entirely free from usury, or that the contracting parties are considered exempt from any obligation to make restitution. Nor, in the case we are discussing, should it be overlooked that, since the Chinese are rich, as the Apostolic Vicar A.p. declared in his letters, it is certainly difficult for them to enter into a loan contract with the intention that, if a more favorable or less burdensome contract were available, they would prefer to enter into the latter, a more burdensome one but tainted with usury, rather than the former. In such difficulties, since neither the customs of the people, nor the conditions

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of the contract, nor the circumstances of things and times, nor the laws and customs of the region of Rome are apparent, His Holiness has not wished to establish anything for the general resolution of this doubt, but has entrusted the whole matter to the judgment, prudence, and teaching of the missionaries, so that, after consulting with approved theologians, they may judge and decide, with the help of divine light, whatever they deem expedient in particular cases. Nevertheless, he ordered that they always keep in mind what has been decreed by this Apostolic See regarding usury, both in the secret letters of Pope Benedict XIV, which begin with the words "Vix pervenit" in the year 1745, and in the Instruction transmitted in the year 1749 to the Capuchin missionaries in Tunisia. 3. A contract of sale with a clause for redemption is permissible if it is made according to the rules of equality as taught by the doctors. Other contracts proposed by the Apostolic Vicar A.p. cannot be approved or disapproved, either because the Apostolic See does not usually propose any particular contract to the people for the purpose of making a profit, or because lawful and innocent contracts are sometimes tainted by certain conditions, so that they cannot be permitted in any way. Therefore, the missionaries must follow these principles.

[*Latin ed. p. 704*]

704 APPENDIX VI. The rules transmitted by Saint Benedict XIV, as mentioned in the aforementioned letter, and also in the Instruction of April 17, 1740, issued by the same Pontiff, in response to the requests of the Capuchin Order. Documents of the Sacred Congregation of the Holy Office, March 4 and 18, 1784. – Regarding the Vicariate Apostolic of Constantinople. Responses concerning certain contracts which are considered to be tainted by usury. The Most Reverend Joseph Anthony Frachia, Archbishop of Theodosiopolis and Apostolic Vicar of Constantinople, presented many accounts to the Sacred Congregation of Propaganda Fide concerning certain contracts celebrated in the same city of Constantinople, which he believes cannot be excused from the stain of usury. Therefore, since the exposition of the aforementioned Vicar was transmitted by the Sacred Congregation of Propaganda Fide to another Sacred Office, in order to provide a more complete and accurate response to the questions proposed by the aforementioned Vicar, the following doubts were extracted:

1. Whether, due to the lack of public funds in *Mons*, or due to the difficulty of creating credit, and other legitimate contracts, or even to prevent damage to artisans and merchants, it is permissible for anyone to lend their money on loan with interest to anyone, even if there is no title of loss or damage arising.

2. Whether, for the same reason, without a just title, it is permissible to grant such a loan, at least to widows, orphans, heads of families, and other persons who lend money, not to increase their own fortunes, but to

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provide for their own needs, to provide for the needs of their families due to various events occurring; since if they refrained from lending, either the family would lack honest or necessary things, or they would be forced to consume capital and be reduced to poverty.

3. Whether the funds of nations, or of merchant communities, can be considered as public funds in the city of Constantinople, so that it is permissible to lend money to them on loan, with an interest rate of seven or eight percent, as is customary, even though there is no title of loss or damage?

4. Since fires, plagues, slanders, commonly called *avanie*, are not uncommon in Constantinople, and which sometimes the borrowers suffer with great damage, the question is asked: Whether, due to the risk to which the loans are exposed in these cases, it is permissible to demand something more than the principal for the money lent?

[*Latin ed. p. 705*]

APPENDIX VI. 705 5. Whether it is licit to legally demand repayment of a loan, made with an agreed-upon interest rate, from a borrower, due to the dangers exposed by the lender, when the borrower delivers to the lender a pledge equivalent to or exceeding the value of the loan. The reason for doubt is that, if the borrower does not return the principal of the loan within the specified time, the lender cannot sell the pledge in order to recover his money. Therefore, the lender either must wait for the return of the principal, when it pleases the borrower, or he must, with considerable expense, compel the borrower before the regional courts to sell the pledge, so that the principal of the loan is returned to him. Sometimes, it also happens, though rarely, that the pledge received by the lender as security for the loan is completely lost, because a third party proves before the courts that the pledge held by the lender was not the borrower's, but his own, and he claims it back through the judge.

6. Whether it is licit, without a just title of damage or loss, to grant a loan with interest to religious communities, at a rate of four or five percent, when, except for the dangers of pestilence, earthquakes, and to some extent, fires, they are almost immune from other dangers, and the repayment of the loan appears to be more secure with those same communities than with other inhabitants of the same city.

7. Whether a religious community, which receives a loan with interest at a rate of four or five percent, may lend the same money received by loan to another person with interest at a rate of ten percent.

8. Whether priests ordained for the title of mission can contribute money to a business venture, and thus receive a share of the profit from the business, whether determined or eventual. The reason for doubt is that, since they lack a benefit or property, they are not sufficiently provided for their sustenance, or for cases of infirmity, pestilence, fire, old age, in which alms

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from Masses can provide them with little or nothing.

Therefore, after these matters above have been diligently considered and examined before His Holiness, in the presence of the Most Holy Fathers, on the days of March 4, 11, and 18, after prior consultations with theologians in the Congregations of the Supreme General Inquisition: His Holiness, having heard the votes of the Most Reverend Cardinals, decreed that the following should be answered:

Regarding questions 1 and 2, it is not licit for anyone, nor even for widows, orphans, and heads of families in need of assistance, due to the lack of public funds, or the difficulty of creating taxes, or of entering into other licit contracts, or in anticipation of losses that may befall artisans and merchants, unless there is another just title of damage and loss, Acts, Vol. XXVIII, page CCCXXXVI. 45.

[*Latin ed. p. 706*]

706 APPENDIX VI. Concerning lost profits, lending money with an agreement to receive something beyond the principal. 3. Although, according to what was proposed, it seemed less likely that something beyond the principal could be received, than that national or mercantile communities could be considered as public funds, so that, for money lent in them without just title, either damage or loss, something beyond the principal could be received; nevertheless, His Holiness did not wish to decide anything on this matter, but first ordered that the Apostolic Vicar should inquire: 1. Whether anyone, and especially under what title, lends money to these national or mercantile communities. — 2. Whether they have certain revenues which they sell in such contracts for the benefit of those who borrow the money. — 3. Whether these national or mercantile communities are established by any public authority. Once the Apostolic Vicar has clearly satisfied these inquiries, a more appropriate answer to the proposed question will be given, and a certain resolution will be reached. Regarding questions 4, 5, and 6. Although they were presented separately, a single answer must be added to all of them, which, for greater clarity, is included in the following instruction. Therefore, it is first necessary to examine, etc. From these, everyone can see how much less it is permissible for Regular Communities to receive something beyond the principal without just title of damage or loss, solely because of the danger of public misfortunes such as plagues, fires, and earthquakes, since, according to the circumstances of the case, as proposed in question VI, these are often immune from the other dangers mentioned above, and it is safer to place money on loan with them than with other inhabitants of this city. Regarding question 7. It is not permissible for Regular Communities to lend money received with interest, at a rate of four or five for every hundred, which is usury, to others. Regarding question 8. His Holiness also ordered that this question should be answered by instruction. The

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entire question revolves around whether it is permissible for priests ordained for the mission, who lack property and benefits, and who can obtain little or nothing for themselves from the alms of Masses, to engage in some lawful and honest business to support themselves. However, it must be distinguished whether these priests are now in such need that, if it is not provided for, they are forced to beg for their sustenance, thereby dishonoring their character; or whether, rather, they are providing for future contingencies of infirmity, old age, and even plagues, fires, and earthquakes, to which this city is frequently subject, and wish to obtain some profit from business in order to provide for their future needs with appropriate caution.

[*Latin ed. p. 707*]

APPENDIX VI. 707. Let them avoid ruin. Concerning priests who are presently suffering from a lack of resources, a decree of the Holy Congregation of the Propagation of the Faith, dated November 23rd of the year 1665, which is transmitted here, is readily available: (1) And concerning others, who desire to provide for their future, but probable, needs, there is also the encyclical letter of the Most Holy Pope Clement XIII, dated September 17th of the year 1759, which begins with the words "Cum primum," and especially in §§ "Si autem ecclesiasticorum quispiam etc." Then, "Deinde pro eo etc." Furthermore, "Caeterum facultas etc.," whatever is appropriate to the matter is most holily determined. A copy of this letter is also included here. From these enactments of the Apostolic See, if the Apostolic Vicar of Constantinopolitanus diligently and carefully observes the rules, regulations, and even the indulgences therein expressed, it will be easy for him to dispel all doubt, and to either immediately assist the needy priests, or to provide for their needs in the future. For if present poverty is pressing, he can, according to the aforementioned decree of the year 1665, permit some transaction to be made by the priests, provided that, under the conditions added in that same decree. If, however, provision must only be made for future needs, let him use the faculty granted by Pope Clement XIII to bishops outside of Italiam, and let him grant dispensations to the priests, so that they may seek means of support to avoid poverty, according to those conditions and rules, as the same Pontiff prescribed in that Letter. (I) Namely, the decree: "It is permitted only for their own support; however, the contract must be of a licit nature, and they must only incur debts to the extent that it constitutes an honest patrimony."

[*Latin ed. p. 708*]

708 ENCYCLICAL LETTER from Our Most Holy Lord Leo XIII, by divine providence Pope, to the Patriarchs, Primates, Archbishops, Bishops, and other ordinaries of places, concerning the unity of the Church. It is sufficiently known to you that a considerable part of Our thoughts and

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concerns has been directed towards the effort to bring back to the fold, placed under the supreme pastoral care of the Good Shepherd Jesus Christ, those who have strayed. With this purpose in mind, We have considered it a salutary plan and a worthy undertaking to describe the image and, as it were, the features of the Church, in which the principal and most worthy consideration is unity, which the divine Author has impressed upon it for all eternity, as a sign of invincible truth and virtue. The beauty and splendor of the Church ought greatly to be present in the minds of those who contemplate it; and it is not far from the true likeness, that by its contemplation, ignorance may be removed; false opinions and prejudices may be healed, especially among those who are in error not through their own fault; nay, even in men, the love of the Church may be aroused, a love truly akin to the charity with which Jesus Christ desires His Church, His bride, redeemed by His divine blood. To those who return to the most loving parent, either because they have not yet fully known her, or because they have been unjustly abandoned, if their return is to be accomplished, not by the blood by which Jesus Christ obtained it, but by some labor and much greater annoyance, at least it will be clear that this burden is imposed upon man not by human will, but by divine command and will; and therefore, with the help of heavenly grace, they will easily experience the truth of this divine sentiment: "My yoke is easy, and my burden is light" (1). Therefore, with great hope placed in the Father of lights, from whom every good gift and every perfect gift descends (3), that is, from Him who gives growth (4), We earnestly pray that He may deign to grant us the power to persuade. Although God can, by His own virtue alone, accomplish all things that are done by created natures, nevertheless, for the help of men, He uses men, out of the benign providence (1) Ephesians V, 25. (2) Matthew XI, 30. (3) James I, 17. (4) 1 Corinthians III, 6.

[*Latin ed. p. 709*]

ENCYCLICAL LETTER. With deliberation, He chose [His Apostles], and just as in the natural order, perfection is due, so too in those things that transcend the order of nature, sanctity and salvation are usually imparted to men through the ministry and works of men. But it is clear that nothing can be communicated among men except through external things that are perceived by the senses. For this reason, the Son of God assumed human nature, who, though He was in the form of God, did not esteem equality with God a thing to be grasped; but humbled Himself, taking the form of a servant, being made in the likeness of men (1); and thus, acting on earth, He imparted His doctrine and the precepts of His law to men through words. Since His divine mission was to be perpetual and lasting, therefore He associated with Himself certain disciples of His teaching, and made them partakers of His power: and when He had invoked the Spirit of Truth upon them from heaven, He commanded them to go

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throughout the world, and to faithfully preach to the whole human race all that He had taught and commanded: with this purpose, that the human species, through His doctrine and profession, and through obedience to His laws, might attain sanctity on earth, and eternal happiness in heaven. In this manner and according to this principle, the Church was born. Indeed, if the ultimate goal, and the proximate causes that produce sanctity, are considered, it is certainly spiritual; but if one considers those to whom it is related, and the very things that lead to spiritual gifts, it is necessarily external and plainly visible. The Apostles received the ministry of teaching through signs seen and heard: and they did not perform this ministry in any other way than through words and deeds, which certainly moved the senses. Thus, their voice, externally reaching the ears, engendered faith in the hearts of men: For faith then cometh by hearing; and hearing by the word of Christ (2). And faith itself, that is, assent to the first and highest truth, is comprehended by the mind itself, but it must nevertheless outwardly manifest itself with evident profession: For with the heart we believe unto justice: but with the mouth, confession is made unto salvation (3). Similarly, there is nothing internal to man of heavenly grace, which generates sanctity; but external things are the ordinary and principal instruments for the impartation of grace: we call them sacraments, which are administered by those specifically chosen by men, through the certain operation of rites. Jesus Christ commanded the Apostles and their perpetual successors to evangelize the nations.

(1) Philippians 2, 6-7.

(2) Romans 10, 17.

(3) Ibid. 10.

[*Latin ed. p. 710*]

710 ENCYCLICAL LETTER: He commanded the nations to receive their doctrine and to obey their authority. Truly, this reciprocity of rights and duties within the Christian republic could neither endure nor even begin, except through interpreters and messengers conveying the meaning of things. — For these reasons, the Church is called both a body and the Body of Christ, as the sacred Scriptures frequently state: "Now you are the body of Christ and members of member" (1 Corinthians 12:27). Because it is a body, the Church is visible to the eyes; because it is the Body of Christ, it is a living body, active and flourishing, for it is guarded and sustained by the power of Jesus Christ, in much the same way that He nourishes and makes fruitful the vines that cling to Him. Just as in animals, the principle of life is hidden and deeply concealed, yet is indicated and manifested by the movement and activity of its members, so in the Church, the supernatural principle of life is clearly evident in the things that are done by it. Consequently, those who fabricate the Church according to their own will, and who present it as something hidden and barely visible, are in a great

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and equally pernicious error; as are those who treat it as a mere human institution, with some measure of discipline, external rites, but without a constant communication of the gifts of divine grace, without those things which testify to a daily life drawn from God and openly manifest. Indeed, it is as impossible for the Church of Jesus Christ to consist of either the body alone, or the soul alone, as it is for a man to consist of either the body alone, or the soul alone. The union and conjunction of these two, as parts, is absolutely necessary for the true Church, just as the intimate union of soul and body is necessary for human nature. The Church is not something among the dead, but the Body of Christ, endowed with supernatural life. Just as Christ, the head and model, is not one if only His human nature, the visible aspect, is considered, as the Photinians and Nestorians do; nor is He one if only His divine nature, the invisible aspect, is considered, as the Monophysites are wont to do; but He is one of both and in both natures, with both the visible and the invisible; thus, His mystical body is not the true Church unless it is because its parts possess visible activity and life from supernatural gifts and other things, from which their own reason and nature flourish. Moreover, since the Church is of this kind, by will and...

[*Latin ed. p. 711*]

By divine constitution, such a union of visible and invisible things must, without any interruption, endure throughout all eternity; for if it were not to endure, it would certainly not have been established for all time, and the very end to which it tends would be limited to a certain time and place, which is contrary to both truth. Therefore, this union of visible and invisible things, because it is natural and inherent in the Church by divine will, must endure as long as the Church itself endures. Wherefore, Chrysostom says: "Do not withdraw yourself from the Church; for nothing is stronger than the Church. Your hope is the Church, your salvation is the Church, your refuge is the Church. It is higher than heaven and wider than the earth. It never grows old, but always flourishes." Therefore, demonstrating its firmness and stability, Scripture calls it a mountain (1). And Augustine says: "The pagans think that the religion of the name of Christ will last for a certain time in this age, and then will not last. Therefore, it will endure as long as the sun rises and sets; that is, as long as these times pass, the Church of Bel, that is, the Body of Christ on earth, will not be lacking" (2). And elsewhere, he says: "The Church will flourish if its foundation flourishes; but how will Christ flourish?... If Christ does not flourish, it will not decline in the world." Where are those who say that the Church has perished from the world, when it cannot even decline? (3) These things should be used as foundations by those seeking the truth. Indeed, the Lord Christ instituted and formed the Church; therefore, when inquiring into its nature, the first thing to know is what Christ willed and what He actually accomplished. To this rule, the unity of the Church, about which something has been said in

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these letters for the sake of common benefit, must be most strictly adhered. It is indeed certain among all that there is one Church of Jesus Christ, as it is clear from the bright and abundant testimony of the sacred Scriptures, that no Christian would dare to contradict. But in judging and establishing the nature of unity, many errors have led people astray. The origin of the Church, and indeed its entire constitution, pertains to the free will of things; therefore, all judgment must be referred to what has actually been done, and it must be inquired not so much how the Church can be one, but how He who founded it willed it to be one.

(1) Hom. De capto Eutropio, n. 6.

(2) In Psal. LXXI, n. 8.

(3) Enarratio in Psal. CHI, sermo II, n. 5.

[*Latin ed. p. 712*]

712 LETTER. ENCYCLICAL. Indeed, if one considers what has been done, the Church of Jesus Christ was not established in such a way as to comprise multiple communities of a similar nature, but distinct, and not bound together by those bonds which constitute the Church as one and unique body, precisely as we profess the one Creed... the Church in the symbol of faith. The Church, which is one, is united in essence; the heretics strive to divide it into many parts. Therefore, we declare the ancient and Catholic Church to be one in essence, in opinion, in principle, and in excellence. Furthermore, the preeminence of the Church, like the principle of construction, consists in its unity; all else is subordinate to it, and it has nothing similar to itself or equal to it (1). Truly, when Jesus Christ spoke of such a mystical edifice, He did not mention any church other than the one He calls His: "I will build My Church." Whatever else is conceived besides this, since it was not founded by Jesus Christ, cannot be the true Church of Christ. This is even more evident if one considers the purpose of the Divine Author. What did Christ the Lord seek, what did He will, in founding the Church? He sought this: to transmit the same mission and the same command to it, which He Himself had received from the Father. He plainly decreed that it should be done, and He accomplished it. "As the Father hath sent Me, so I send you" (2). "As You have sent Me into the world, so I have sent them into the world" (3). Indeed, the mission of Christ is to deliver from death to salvation that which had perished, that is, not a few nations or states, but all of mankind, without distinction of place or time, the entire human race: "The Son of Man is come... that the world might be saved through Him" (4). For there is no other name given under heaven, in which it is necessary for us to be saved (5). Therefore, the Church must widely spread the salvation given through Jesus Christ, and all the benefits that flow from it, to all men and to all ages. Therefore, by the will of its Author, it must be one in all lands, and for all time. For it could not be multiple without exceeding the limits of the earth and the human

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race, and without creating something new and unheard of.

(1) Clement of Alexandrinus, *Stromata*, Book VII, chapter 17.

(2) John 20:21.

(3) John 17:18.

(4) John 3:17.

(5) Acts 4:12.

[*Latin ed. p. 713*]

ENCYCLICAL LETTER 713. This very thing, concerning the one Church, encompassing all mortals, everywhere and at all times, was foreseen by Isaiah, who, looking towards the future, beheld the image of a mountain, surpassing in height and conspicuousness, which represented the House of the Lord, that is, the Church: "And in the last days the mountain of the house of the Lord shall be prepared on the top of mountains, and it shall be exalted above the hills, and all nations shall flow unto it." (1) But this one mountain is located on the top of mountains: one House of the Lord to which all nations will one day come seeking the rule of life: "And all nations shall flow unto it... and they shall say: Come, and let us go up to the mountain of the Lord, and to the house of the God of Jacob, and he will teach us his ways, and we will walk in his paths." (2) When Optatus of Milevum reached this point, he said, "It is written in the prophet Isaiah: From Sion shall go forth the law, and the word of the Lord from Jerusalem." Therefore, on that mountain Sion, Isaiah does not see a valley, but the holy mountain, which is the Church, which has held dominion over the entire Roman world under the whole heavens... Therefore, the Church is the spiritual Sion, in which Christ, appointed by God the Father as King, is present, and which is throughout the entire earth, in which is the one Catholic Church (3). Augustine, however, says: "What is more manifest than a mountain? But there are also unknown mountains, because they are located in one part of the earth...." But as for me, the mountain is not like that, because it has filled the entire face of the earth: and it is said of it: "Prepared on the summit of mountains" (4). Furthermore, it is added that the Church, the Son of God decreed to be his mystical body, with which he himself would be joined as the head, according to the likeness of the human body which he assumed: to which, by natural adhesion, the natural head is attached. Just as, therefore, he took to himself a single mortal body, which he offered up for torments and death, to pay the price for the salvation of mankind, so likewise he has a single mystical body, in which and through whose works he makes men partakers of the sanctity and eternal salvation: He (God) gave (Christ) as the head over all the Church, which is his body (5). Scattered members and those separated cannot, with the head, form a single, cohesive body. But Paul says, "But the body is not one member, but many" (6). Therefore, this body (1) Isaiah II, 2. (2) Ibid., 2-3. (3) De

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Schism. Donatisi, book III, chapter 2. (4) In Epist. Ioan., treatise I, chapter 13. (5) Ephesians I, 22-23. (6) 1 Corinthians XII, 12.

[*Latin ed. p. 714*]

714 The Encyclical letter states that the mystical union is both compact and connected. Christ is the head: from whom the entire body is compact and connected through every bond of communion, according to the operation and measure of each member (1). Therefore, if any members wander away from the other members, they cannot be united with the same and unique head: For there is one God, and one Christ, and one Church of His, and one faith, and one people, united in a solid body by the bond of concord. The unity cannot be divided, nor can the one body be separated by discord of communion (2). To better depict the Church as one, it is illustrated with the likeness of a living body, whose members cannot be nourished in any other way than by being joined to the head, drawing their vital force from the head itself: separated, they must die. The Church... cannot be torn apart or cut into pieces. Whatever has departed from the womb, cannot live and breathe apart (3). What likeness, indeed, does a dead body have with a living one? For no one ever hates his own flesh, but nourishes and cherishes it, just as Christ does the Church: because we are members of His body, of His flesh, and of His bones (4). Therefore, another head, another Christ, will be established, if another Church is to be feigned apart from that which is His body. See what you are doing, see what you are observing, see what you should fear. It happens, as in a human body, or in any body, that a member is cut off, a hand, a finger, a foot: does the severed member follow the soul? While it was in the body, it lived: severed, it loses life. Likewise, a Christian is Catholic as long as he lives in the body: severed, he becomes a heretic: the amputated member does not follow the spirit (5). Therefore, the Church of Christ is unique and perpetual: whoever departs from it goes astray from the will and command of Christ the Lord, and abandoning the path of salvation, proceeds to ruin. Whoever, separated from the Church, is joined to adultery, is separated from the promises of the Church, and will not attain the rewards of Christ. He who does not hold to this unity, does not hold to the law of God, does not hold to the clay of the Father and the Son (6). faith, (1) Ephesians 4:15-16. (2) St. Cyprian, On the Unity of the Catholic Church, n. 23. (3) Ibid. (4) Ephesians 5:29-30. (5) St. Augustine, sermon 267, n. 4. (6) St. Cyprian, On the Unity of the Catholic Church, n. 6. life.

[*Latin ed. p. 715*]

ENCYCLICAL LETTER 715. But He who founded it, founded it in such a way that all who would be within it would be bound together with the closest bonds, so that they would truly form one people, one kingdom, one body: "One body and one Spirit, as you are called in one hope of your

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calling" (1). Jesus Christ ratified this will concerning this matter, already near to death, and most solemnly consecrated it, thus praying to the Father: "And not for them only do I pray, but for them also who through their word shall believe in me... that they may all be one... that they may be made perfect in one" (2). Indeed, He so strongly commanded that there be unity among His followers, and such perfect unity, that it would imitate, in some way, the union with the Father: "I pray... that they may all be upon one, even as thou, Father, art in me, and I in thee" (3). Such great harmony and absolute concord among men requires, as its necessary foundation, a harmonious joining together of minds: from which conspiracy of will and similarity of actions are naturally born. Therefore, according to the counsel of His divinity, He commanded that there be unity of faith in His Church: for this virtue is first found in those bonds which join man to God, and from this we have received the name of faithful. "One Lord, one faith, one baptism" (4): just as there is one Lord and one baptism, so too, it is fitting that all Christians, wherever they may be, should have one faith. Therefore, the Apostle Paul does not merely ask Christians to think the same things and to avoid dissensions of opinion, but he urges and plainly implores them: "Now I beseech you, brethren, by the name of our Lord Jesus Christ, that you all speak the same thing and that there be no schisms among you: but that you be perfect in the same mind and in the same judgment" (5). These passages, indeed, do not require an interpreter: they speak sufficiently for themselves. It is commonly agreed that those who profess to be Christians ought to have one faith. What is of the greatest importance and absolutely necessary, in which many are deceived by error, is to understand what is the nature and form of this unity. This, as we have done in a similar case above, is not a matter of opinion or conjecture, but of knowledge of the facts, namely, by seeking and establishing what kind of unity in faith Jesus Christ commanded to be.

(1) Ephesians 4:4.

(2) John 17:20-21-25.

(3) Ibid. 21.

(4) Ephesians 4:5.

(5) 1 Corinthians 1:10.

[*Latin ed. p. 716*]

716 ENCYCLICAL LETTER: The doctrine of Jesus Christ, though containing a great part revealed by divine inspiration in writing, could not, by itself, unite minds, a task left to human ingenuity. For it was inevitable that it would fall into various and mutually differing interpretations; and this not only because of the power and mysteries of the doctrine itself, but also because of the diversity of human understanding, and the distractions caused by the desires of those who turn away from the study of truth. From

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the difference in interpreting, dissimilarities in feeling arise; hence controversies, dissensions, and contentions, which the Church itself witnessed in its earliest days. Concerning the heretics, Irenaeus writes: "They confess the Scriptures, but they pervert the interpretations" (1). And Augustine: "For heresies and certain perverse doctrines have not arisen, and have not dragged souls down into the depths, unless when the good Scriptures are understood not well" (2). Therefore, in order to unite minds, to bring about and maintain concord of opinions, so that the divine words might be effective, it was absolutely necessary to have some other principle. This is what divine wisdom requires: for God could not will that there should be one faith, unless He had provided some suitable means for preserving unity; which, as we shall soon say, the sacred Scriptures clearly indicate. Certainly, the infinite power of God is bound by no obstacle, and all things are subject to His will, as instruments in His hands. Therefore, considering this external principle, we must consider what, of all things within His power, Christ chose. For this reason, it is fitting that those who bear the name of Christian should recall the beginnings. I recall those things which are attested by divine writings, and which are commonly known. Jesus Christ confirms His divinity and His divine mission by the power of miracles: He insists on instructing the multitude in heavenly things, and He commands that faith be added to Him, the teacher, both by promises of reward and by threats of eternal punishment: "If I do not the works of My Father, believe Me not" (3). "If I had not done among them the works which no other man hath done, they had not been judged" (4). "But if I do them, and if you believe not, judge Me of the works themselves" (5). Whatever He commands, He does so with authority.

(1) Lib. III, cap. 12, n. 12.

(2) In Evang. Ioan., tract. XVIII, cap. 5, n. 1.

(3) John 10:37.

(4) John 15:24.

(5) John 10:38.

[*Latin ed. p. 717*]

ENCYCLICAL LETTER 717 begins: It admits of no exception in the assent of the mind, it makes no distinction. Therefore, those who had heard Jesus, if they wished to attain salvation, it was their duty not only to receive His teaching in its entirety, but to assent with their whole mind to each and every thing which He had taught: for it is repugnant that faith should be applied to God in only one matter. Having returned to heaven, where He had been sent by the Father with power, He sends forth the Apostles, whom He commands to spread and disseminate His doctrine: "And Jesus coming, spoke to them, saying: All power is given to me in heaven and in earth." "Go therefore and teach all nations." (Matt. 28:18-19-20). Those

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who would appear before the Apostles would be saved, those who would not appear, would perish: "He that believeth and is baptized shall be saved: but he that believeth not shall he condemned." (Mark 16:16). And since it is most fitting for the providence of God that no one should be appointed to a particularly great and excellent office, unless he also receives the means by which he may properly discharge it, therefore Jesus Christ promised to send the Spirit of Truth to His disciples, and to abide perpetually in them: "If therefore I go, I will send him to you, the Paraclete." (John 15:26) "When he comes, he will teach you all things." (John 14:26) "And I will pray the Father, and he shall give you another Paraclete, that he may abide with you for ever, the Spirit of Truth." (John 14:16-17). "He will testify of me: and you also shall testify." (John 15:21-27). Therefore, He commands that the doctrine of the Apostles be received with reverence and preserved faithfully, just as His own: "He that heareth you heareth me: and he that despiseth you despiseth me: and he that despiseth me despiseth him that sent me." (Luke 10:16). Therefore, the Apostles are legates of Jesus Christ, just as He is the legate of the Father: "As the Father hath sent me, so I send you." (John 20:21). Therefore, just as it was necessary for those who heard Christ to be Apostles and disciples, so too they ought to have given faith to the Apostles, whatever they taught by divine command. Therefore, to reject even one teaching of the Apostles is plainly no more permissible than to reject anything from the doctrine of Christ Himself. Indeed, the voice of the Apostles, having the Holy Spirit dwelling in them, resounded widely.

[*Latin ed. p. 718*]

718 LETTER. Those who have followed this example, claiming to be ambassadors of Christ Himself, declare that they have received grace and the apostolate to obey the faith in all nations for His name (1): and God openly demonstrates the divine nature of their mission through miracles. And they went forth and preached everywhere (2), with the Lord cooperating and confirming the word with signs that followed (2). But what was this word that they preached? Surely, it was that which encompassed all that they had learned from their Master: for they openly and plainly testify that they could not fail to speak of all that they had seen and heard. But, as we have said elsewhere, the apostolic office was not of such a nature that it could perish with the Apostles, or cease with the passage of time, since it was a public and divinely instituted work for the salvation of the human race. For Jesus Christ commanded the Apostles to preach the Gospel to every creature, and to carry His name before the Gentiles and kings, and to be witnesses for Him to the ends of the earth. And He promised to be with them in this great task, and that not for a few years or ages, but for all time, until the consummation of the world. As Jerome says: Who promises to be with his disciples until the end of the world, and shows that they will always be present, and that he will never abandon those who believe? (3)

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These things, indeed, could only be true of the Apostles, who were subject to the highest necessities of human condition. Therefore, it was divinely ordained that the ministry instituted by Jesus Christ should not be limited by the same boundaries as the lives of the Apostles, but should remain perpetually. We truly see it propagated, passed from hand to hand. For the Apostles consecrated bishops, and those who succeeded them immediately in the ministry of the word, designating them individually. And not only this: they also decreed in their successors that they, too, should ordain suitable men, whom, with the same authority, they would appoint to the office and duty of teaching: "Therefore, my son, be strengthened in the grace that is in Christ Jesus: and that which you have heard from me through many witnesses, commend to faithful men, who will be able to teach others also" (4). For just as Christ was sent by God, and the Apostles by Christ, so too were the bishops and all who succeeded the Apostles, sent by (1) Romans 1:5, (2) Mark 16:20, (3) In Matthew, Book 4, Chapter 28, verse 20, (4) 2 Timothy 2:1-2.

[*Latin ed. p. 719*]

EPISCOPAL ENCYCLICAL 719. The Apostles are: The Apostles were made preachers of the Gospel by the Lord Jesus Christ; Jesus Christ was sent by God. Therefore, Christ was sent by God, and the Apostles by Christ, and both were appointed according to the will of God... Therefore, preaching the word in regions and cities, they tested those who were to believe with the spirit, and they appointed bishops and deacons among those who believed... They appointed these individuals, and subsequently conferred ordination upon them, so that when they would depart, other worthy men might take up their ministry (1). Therefore, it is necessary, on the one hand, to have a constant and unchanging duty of teaching all that Christ taught; on the other hand, to have a constant and unchanging duty of receiving and propagating all of that doctrine. This is excellently illustrated by Cyprian in these words: For our Lord Jesus Christ, when in His Gospel He testified that His enemies were those who were not with Him, did not designate any form of heresy; but He showed that all those who were not with Him, and who did not unite with Him, were scattering His flock, saying: He who is not with me is against me; and he who does not gather with me, scatters (2). Guided by these precepts, the Church, mindful of its office, has never exerted greater diligence and effort than in guarding the integrity of the faith in every respect. Therefore, it has always held in contempt and kept far away from itself those who did not agree with it in any part of its doctrine. The Arians, Montanists, Novatians, Quartodecimans, and Eutychians certainly abandoned not the entire Catholic doctrine, but a part of it; yet, are they not known to have been declared heretics and cast out from the bosom of the Church? And with similar judgment, those who have followed them in later times, the authors of various erroneous

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dogmas, have been condemned. Nothing is more dangerous than these heretics, who, while appearing to run the entire course perfectly, with a single word, like a drop of poison, corrupt the pure and simple faith of the Lord and, consequently, of the apostolic tradition (3). This has always been the practice of the Church, and with the consent of the judgment of the holy Fathers: namely, that those who are excluded from the communion of the Catholic Church and are cast out from it, are those who have deviated, even in the slightest degree, from the doctrine authentically proposed by the magisterium. Epiphanius, Augustine, and Theodoretus are great (1) St. Clement of Rome, Epistle I to the Corinthians, chapters 42, 44. (2) Epistle LXIX to Magnus, paragraph 1. (3) Author of the Tractate on Orthodox Faith against the Arians.

[*Latin ed. p. 720*]

720 ENCYCLICAL LETTER reviewing the number. Alia Augustine observed that certain tendencies could develop, such that even if someone assents to one of them, they are thereby separated from the Catholic unity: Not everyone who does not believe these things (namely, the enumerated heresies) must consequently consider or say that they are already a Catholic Christian. For there can be other heresies, which are not mentioned in this our work, or which may arise, and if anyone holds to any of them, they will not be a Catholic Christian (1). The blessed Paul urges this divinely instituted reason for safeguarding the unity, of which we speak, in his letter to the Ephesians; where, first of all, he exhorts to preserve with great care the harmony of minds: solicitous to preserve the unity of the Spirit in the bond of peace (2): and since harmonious minds cannot be in all respects, unless their minds agree in faith, there must be one faith among all: One Lord, one faith: and so perfectly one, that all distinction of error is prohibited: That we may no longer be children, tossed about and carried away by every wind of doctrine, by the trickery of men, by craftiness in error. And this must be preserved not just for a time, but until we all arrive at unity of faith... to the measure of the fullness of Christ. But where did Jesus Christ place the beginning of such a unity, the safeguard for preserving it? Namely, in the fact that: And he gave some apostles, and some prophets, and other some evangelists, and other some pastors and doctors, for the perfection of the saints in the work of ministry, for the edification of the Body of Christ. Therefore, from the earliest times, the Doctors and Fathers have been accustomed to follow this very rule and to defend it with one voice. Origen: Whenever (heretics) bring forward Scriptures, in which every Christian agrees and believes, they seem to say: Behold, the word of truth is in their houses. But we ought not to believe them, nor to depart from the first and ecclesiastical tradition, nor to believe otherwise than as the Church of God has handed down to us through succession (3). Irenaeus: The true knowledge is the doctrine

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of the Apostles... according to the successions of the bishops... which has come down to us with the fullest care in the handling of the Scriptures, without any falsification (4). Tertullian, moreover: Therefore, it is clear that all doctrine which is not in harmony with these (the Scriptures) is either foreign, or heretical, or the invention of some men.

[*Latin ed. p. 721*]

ENCYCLICAL LETTER 721. The closed apostolic sees and the original sources of faith are joined together, and the truth is to be entrusted to them, without doubt holding that which the Church received from the Apostles, the Apostles from Christ, Christ from God.

We communicate with the apostolic churches, that no one may hold a different doctrine: this is the testimony of truth (1). And Hilary says: "He who teaches from the ship" (Christ teaching from the boat) signifies those who are outside the Church cannot comprehend anything of the divine word. For the Church is like a ship, within which the word of life is placed and proclaimed; those who are outside, and merely adjacent to the shore, cannot understand, and are barren and useless (2). Rufinus praises Gregory of Nazianzus and Basil, because they devoted themselves only to the volumes of divine Scripture, and they followed the understanding of those writings not from their own presumption, but from the writings and authority of the ancients, from whom it was also established that they themselves had received the rule for understanding, derived from the apostolic succession (3). Therefore, from what has been said, it is clear that Jesus Christ instituted in the Church a living, authentic, and the same perennial magisterium, which He augmented by His own authority, instructed by the Spirit of Truth, confirmed by miracles: and He willed that His precepts and doctrine should be received with the same gravity as His own words, and He commanded it most strictly.

Therefore, whenever this word of the magisterium is spoken, and it contains the complex of the divinely revealed doctrine, each one ought certainly to believe that it is true; for if it could be false in any way, it would follow that the author of error in the human being is God Himself: "Lord, if there is error, we have been deceived by You" (4). Thus, with all love, no one ought to be permitted to despise any of those truths, lest by doing so, he plunge himself headlong into open heresy? And, separated from the Church, will he not reject the entire Christian doctrine in its entirety? For such is the nature of faith, that nothing is so repugnant to it as to believe this, and to reject that. For the Church professes that faith is a supernatural virtue, by which, with the help of God and the aspiration of grace, we believe those things to be true which have been revealed by Him, not because of the intrinsic truth of things perceived by the light of natural reason, but because of the authority of Him who reveals, who cannot be deceived, nor can deceive (5). Therefore, if anything has been handed down from God,

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and yet...

(1) De Praescriptione, cap. XXI.

(2) Commentarius in Matthaeum, XXXI, n. I.

(3) Epistola Ecclesiastica, lib. II, cap. 9.

(4) Richardus de S. Victore, De Trinitate, lib. I, cap. 2.

(5) Concilium Vaticanum II, sessio III, cap. 3. Acta, Tomus XXVIII, pag. CCOXXXVI.

[*Latin ed. p. 722*]

722 LETTER. ENCYCLICAL. It is believed that nothing whatsoever is believed by divine faith. For just as the Apostle James judges a fault in the general order of morals, so likewise should an error of opinion be judged in the general order of faith: Whoever... offends... in one [point], is guilty of all (1). Indeed, concerning an error of opinion, even more so. For every violation of the law is more properly said of him who has committed one sin, because it can be seen that he has scorned the majesty of God, the lawgiver, only in appearance. On the contrary, those who dissent from divinely revealed truths, even in one particular, utterly lose faith, since they reject God, inasmuch as He is the supreme truth and the proper motive for faith: "In many things we are agreed with you, but in some things not with you; yet in those things in which we are not with you, many things are not profitable to you, in which we are with you" (2). And rightly so: for those who take from Christian doctrine what they wish, rely on their own judgment, not on faith; and they do not, in truth, bring their entire intellect into obedience to Christ (3), but rather they obey themselves more than they obey God: "You believe in the Gospel that you wish; you do not believe in the Gospel that you wish; you believe more in yourselves than in the Gospel" (4). Therefore, the Fathers in the Vatican Council did not establish anything new, but followed the divine institution, the ancient and constant doctrine of the Church, and the very nature of faith, when they decreed: "All those things are to be believed which are contained in the written or transmitted Word of God, and which are proposed by the Church, whether by solemn judgment, or by the ordinary and universal magisterium, as divinely revealed" (5). Therefore, since it is evident that God wills unity of faith within His Church, and since it is clear that this unity is of such a nature, and that He Himself has commanded that it be preserved, it is permissible for us to address those who have refused to open their ears to the truth with the words of Augustine: "Therefore, when we see so much help from God, so much progress, and so much fruit, let us not doubt that we are members of that Church, which, from the apostolic See, through the succession of bishops, has been preserved until the confession of the human race, surrounded by heretics who are condemned, in part by the judgment of the people themselves, in part by the gravity of the Councils,

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and in part even by the majesty of miracles, at CheÅ□mno."

(1) Galatians 5:3

(2) St. Augustine, in Psalm 54, n. 19.

(3) II Corinthians 10:5.

(4) St. Augustine, Book 17, Against Faustus the Manichaean, chapter 3.

(5) Session 3, chapter 3.

[*Latin ed. p. 723*]

ENCYCLICAL LETTER 723: Those who refuse to give due regard to [the Church] are, indeed, guilty of the height of impiety, or, at the very least, of extreme arrogance. And if every discipline, however simple it may seem, requires a teacher or master; what greater arrogance can there be than to refuse to learn the books of the divine sacraments and their interpretations, and to condemn what one does not know?

Therefore, without any doubt, it is the duty of the Church to defend the Christian doctrine and to spread it intact and incorrupt. But this is by no means all; indeed, even the end for which the Church was instituted is not concluded by this duty. For, just as Jesus Christ devoted Himself for the salvation of the human race, and brought forth all that He taught and commanded, so He commanded the Church to seek the truth of doctrine, so that it might make men holy, and then save them.

But the magnitude and excellence of this purpose cannot be attained by faith alone; it is necessary to add to it the just and pious worship of God, which is most fully contained in the divine sacrifice and the communion of the sacraments, and also the sanctity of laws and discipline.

Therefore, all these things must be present in the Church, since they continue the work of the Savior: the religion, which He willed to be present in it as its very body, provides to all mankind complete salvation in every respect; and also, it alone provides those things which, according to the ordinary plan of Providence, are the instruments of salvation. But just as the heavenly doctrine has never been left to the private judgment or ingenuity of individuals, but has been handed down from Jesus Christ according to a principle, and then separately entrusted to the ministry, as has been said; so also, not to every individual among the Christian people, but to certain chosen ones, has been divinely granted the power to perfect and administer the divine mysteries, together with the power to govern and rule. For it is only to the Apostles and their legitimate successors that the things said by Jesus Christ belong: "Go into the whole world, and preach the Gospel... baptizing them... This do in my memory..." And just as the forgiveness of sins is granted only to the Apostles, and those who lawfully succeeded them, so also it was commanded that they should feed, that is, govern, the Christian people, to whom it necessarily follows that they must be subject and obedient.

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(1) *De utilitate Credendi*, chapter XVII, paragraph 35.

[*Latin ed. p. 724*]

724 ENCYCLICAL LETTER: The entirety of the duties of the apostolic office are summarized by the sentiment of Pauli: "Let a man so account of us as of the ministers of Christ, and the dispensers of the mysteries of God" (1 Corinthians 4:1). Therefore, Jesus Christ, both those who are and those who will be, calls all to follow Him as their leader and their savior, not only individually, but also united and joined together in spirit and soul, so that a true society of people may exist; united in faith, in purpose, and in the communion of things suitable to that purpose, and subject to the same authority. Through this, He has established in the Church the principles of nature, which spontaneously generate society in men, so that they may attain a perfection consonant with nature, namely, so that all who wish to be sons of God may attain and maintain, within the Church, the perfection that is fitting for their dignity, for the sake of salvation. Therefore, the Church, as we have already touched upon, is a guide for men to the heavenly realm, and it is the duty assigned to it by God to oversee and decide matters pertaining to religion, and to administer the Christian faith freely and expeditiously according to its own judgment. Therefore, those who accuse the Church of seeking to interfere in the affairs of states, or of encroaching upon the rights of powers, do not understand it correctly or are unjust in their accusations. Indeed, God has perfected the Church so that it is far superior to all other societies, for the end that it seeks is more noble than that which other societies seek, inasmuch as nature, by divine grace, and by things that are temporal, are made superior to immortal goods. Therefore, the Church is a society of divine origin; in its purpose and in the things closely related to that purpose, it is supernatural; but in the union of men, it is a human community. Therefore, in the sacred Scriptures, we frequently see it called by the name of a perfect society. It is called not only the House of God, the City situated upon a mountain, to which it is necessary for all nations to come; but also the Flock, of which one shepherd presides, and to which all the sheep of Christ ought to come; indeed, it is the Kingdom which God has raised up, and which will endure forever; finally, it is the Body of Christ, that mystical Body, and yet a living and fittingly composed one, made up of many members; which members do not have the same function; but, being united among themselves, and governed and guided by the head, they are contained within it. Truly, no true and perfect society of men can be conceived without some supreme authority.

(1) 1 Corinthians 4:1.

[*Latin ed. p. 725*]

ENCYCLICAL LETTER 725, to be observed. Therefore, Jesus Christ must

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have placed Himself at the head of the Church's government, to Whom the entire multitude of Christians must be obedient and subject. For just as, with regard to the unity of the Church, insofar as it is a gathering of the faithful, unity of faith is necessary, so also, with regard to its unity, insofar as it is a society divinely established, divine law requires unity of governance, which effects and includes the unity of communion: And the unity of the Church is considered in two aspects: namely, in the connection of the members of the Church to one another, or in communion, and again, in the order of all the members of the Church to one head (1). — From this, it can be understood that people are separated from the unity of the Church not only by schism, but also by heresy: Some hold that heresy differs from schism in that heresy has a perverted dogma, while schism separates from the Church because of disagreement with the bishop (2). With which the opinion of John Chrysostom agrees on the same matter: I say and affirm, to divide the Church is no less a evil than to fall into heresy (3). Therefore, if there can be no honest heresy, by the same reasoning, there can be no schism that can appear to be lawful: There is nothing more sacrilegious than schism... there is no just necessity for disrupting the unity that is to be preserved (4). But what kind of power this is, to which all Christians ought to be obedient, can only be determined by discovering and knowing the will of Christ. Certainly, Christ is King forever, and He also forever governs and protects His kingdom from heaven, though He is not seen: but because He willed that it be manifest, He must have designated those who would carry out His affairs on earth, after He Himself had returned to the heavens: But if anyone were to say that Christ, who is the one head and the ultimate pastor, is the one spouse of one Church, this is not a sufficient answer. It is indeed manifest that the ecclesiastical sacraments are perfected by Christ Himself: for He Himself is the one who baptizes, He is the one who remits sins, He is the eternal priest who offered Himself on the altar of the cross, and by whose power His body is daily consecrated on the altar; and yet, because He would not be present corporally with all the faithful, He chose ministers, through whom the aforementioned things are dispensed to the faithful, as stated above (chap. 74). Therefore, for the same reason, because He is not present, He chose ministers, through whom the aforementioned things are dispensed to the faithful, as stated above (chap. 74).

(1) St. Thomas, 2-2, q. XXXIX, a. i.

(2) St. Jerome, Commentary on the Epistle to Titus, chap. III, vv. 10-11.

(3) Hom. XI. on the Epistle to the Ephesians, n. 5.

(4) St. Augustine, Against the Letter of Parmenianus, book II, chap. 11, n. 25.

[*Latin ed. p. 726*]

726 An ENCYCLICAL LETTER: Since it was necessary that someone be appointed who, in his place, might care for the universal Church, lest the

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body of the Church be diminished, it was fitting that He entrust this to someone. Hence, before His ascension, He said to Peter: "Feed my sheep" (1). Therefore, Jesus Christ gave Peter, the supreme governor of the Church, and He established that such a magistracy, instituted for the common good and for perpetuity, should be transferred to successors by hereditary right, in whom Peter himself would have perpetual authority. Indeed, that sign was promised to blessed Peter, and to no one else: "And I say to thee: That thou art Peter; and upon this rock I will build my church, and the gates of hell shall not prevail against it" (2). — The Lord spoke to Peter: once, that unity might be established from one (3). — Indeed, without any preceding prayer... He calls him, not by the name of his father, but by his own name (blessed are you, Simon, son of John), and He no longer allows Simon to be called, but it pleased Him to call him Peter, from "rock," that is, upon whom He was about to build His Church (4). From this prophecy, it is clear that, according to God's will and command, the Church is to be established in blessed Peter, just as a building is established upon a foundation. But the very nature and power of a foundation is to make the building, composed of various members, cohere, and also to be a necessary bond of safety and firmness for the work; if this is removed, all building will collapse. Therefore, it is for Peter to sustain the Church, to keep it connected and firm, and not easily dissolved. But how can one fulfill these duties without the power to command, to forbid, to judge, which is truly and certainly called jurisdiction? Indeed, states and public affairs stand only by the power of jurisdiction. The principality of honor and that gentle faculty of advising, which they call direction, cannot greatly benefit any human society, nor can they contribute to unity or firmness. And this power, of which we are speaking, is declared and confirmed by these words: "And the gates of hell shall not prevail against it." — But upon what rock does Christ build the Church? Or is it the Church itself? The expression is indeed ambiguous: is it, as if they were one and the same thing, the rock and the Church? I believe this to be true, for He does not build the Church upon a rock other than the one upon which He builds it.

(1) St. Thomas, Contra Gentiles, Book IV, Chapter 76.

(2) Matthew 16:18.

(3) St. Pacianus, to Sempronia, Letter III, paragraph 11.

(4) St. Cyril of Alexandria, in John, Book II, on Chapter 1, verse 42.

[*Latin ed. p. 727*]

ENCYCLICAL LETTER 727, "Neither shall the gates of hell prevail against it" (1). This divine declaration possesses such power that, whatever enemies, visible or invisible, may attack, whatever arts they may employ, it will never happen that the Church, founded upon Peter, will succumb or fail in any way: for the Church, like the building of Christ, who wisely built "his house upon a rock," is not capable of being overcome, indeed,

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it will overcome every man who is outside the rock and the Church, but it cannot be overcome by it (2). Therefore, God commended His Church to Peter, so that he might perpetually preserve it, safe and invincible, as a tutor. He therefore endowed him with the proper authority: for in order to effectively protect a society, it is necessary for the one who protects to have the right to command. Furthermore, Jesus added: "And I will give to thee the keys of the kingdom of heaven." He is plainly speaking of the Church, which He had just called His own, and which He said He would establish in Peter, as in a foundation. The Church bears the express image, not only of the building, but also of the kingdom; otherwise, the significance of keys as a symbol of authority is known to no one. Therefore, when Jesus promises to give Peter the keys of the kingdom of heaven, He promises to give him power and authority over the Church. He entrusted to him (Peter) the spreading of the knowledge of both the Son and the Father throughout the world, and He gave to a mortal man all power in heaven, when He gave him the keys, through whom the Church is extended throughout the entire earth, and is shown to be more secure than the heavens -(3). The following words reinforce this: "And whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose on earth, it shall be loosed also in heaven." The expression "to bind and to loose" refers to the right to enact laws, as well as to judge and vindicate. This power is said to be of such magnitude and virtue that whatever decrees it makes will be considered ratified by God. Therefore, it is completely sovereign and of its own right, since it has no superior on earth, and it encompasses the entire Church and all that has been entrusted to the Church. The promise is fulfilled when Christ the Lord, after His resurrection, asked Peter three times, "Dost thou love me more than these?" and, as if giving a command, said to him, "Feed" (1) Origen, Commentary on Matthew, vol. XII, no. H. (2) Ibid. (3) St. John Chrysostom, Homily LI V, on Matthew, no. 2.

[*Latin ed. p. 728*]

728 ENCYCLICAL LETTER to my beloved sheep (1). Indeed, all those who were to be found within his fold, he committed to them as to a shepherd: the Lord does not ask, so that He may learn, but so that He may teach, whom He was raising up to Heaven, leaving Him as a vicarious representative for our sake... And therefore, because he alone confesses among all, he is preferred above all... to govern them more perfectly (2). These are the duties and functions of a shepherd: to offer himself as a leader to the flock, and to nourish it with wholesome food, to ward off dangers, to expose snares, to protect it from violence: in short, to rule and govern. Therefore, since Petrus is appointed as shepherd of the Christian flock, he received the power to govern all those whose salvation Jesus Christ foresaw with His abundant blood: Why did He shed His blood? That He might purchase these sheep, which He delivered to Petrus and to his successors

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(3). And since all Christians ought to be joined together in an unchangeable communion of faith, therefore, through the power of His prayers, Christ the Lord obtained from Petrus that he should never falter in faith in the exercise of his authority: "But I have prayed for thee, that thy faith fail not: and thou, being once converted, confirm thy brethren" (4). Furthermore, He commanded him that, whenever the occasion demanded, he himself should impart light of mind and strength to his brethren: "Confirm thy brethren" (5). Therefore, He who is designated as the foundation of the Church, He desires that he also be the pillar of faith: How could He who gave him authority to rule, not be able to strengthen the faith of him whom He calls a rock, the foundation of the Church? (6). Hence, Jesus Himself willed that certain names, signs of great things, which are proper to His own power, should be shared with Petrus (7), namely, so that from the communion of titles, a communion of power might be apparent. Thus, He who is the cornerstone, in whom every building, constructed, grows into a holy temple in the Lord (8), established Petrus as a stone, upon which the Church ought to be supported. When he heard the proclamation "Thou art a stone," he was ennobled. Although he is a stone, not as Christ is a stone, but as Petrus is a stone. For Christ is essentially a living stone.

(1) John 10:16-17.

(2) St. Ambrose, *Expositio in Evangelium secundum Lucam*, Book X, paragraphs 175-176.

(3) St. John Chrysostom, *De Sacerdotio*, Book II.

(4) Luke 22:32.

(5) Ibid.

(6) St. Ambrose, *De Fide*, Book IV, paragraph 56.

(7) St. Leo the Great, Sermon IV, chapter 2.

(8) Ephesians 2:21.

[*Latin ed. p. 729*]

ENCYCLICAL LETTER 729: Peter, indeed, is like the rock. For Jesus bestows His dignities, and is not exhausted; He is a priest, He makes priests; He is a rock, He makes a rock (1). He is also the King of the Church, who holds the key of David: "He who opens, and no one shuts; who shuts, and no one opens" (2). Having entrusted the keys to Peter, He declared him the prince of the Christian republic. Likewise, the supreme pastor, who calls Himself the good shepherd (3), appointed Peter as shepherd to His sheep and lambs: "Feed my sheep, feed my lambs." Therefore, Chrysostom says: "He was outstanding among the Apostles, and the head of the disciples and that assembly..." At the same time, showing him that he must henceforth trust, having abolished his denial, he entrusted him with the leadership of his brothers. And he says: "If you love me, lead your brothers" (4). Finally, He who confirms in all good works and words (5), commanded Peter to

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confirm his brothers. Therefore, Leo the Great rightly says: "Of the entire world, Peter is chosen, who is placed above all the nations, and above all the Apostles, and above all the fathers of the Church: so that, although there are many priests and many pastors in the people of God, nevertheless Peter truly governs all, whom Christ Himself primarily governs" (6). Also, Gregory the Great, to Emperor Maurice in Aoste: "It is clear to all who know the Gospel, that to the holy and most excellent Peter, the prince of the Apostles, to whom the care of the entire Church has been entrusted by the Lord's voice... Behold, he has received the keys of the kingdom of heaven, power has been given to him to bind and to loose, and the care of the entire Church and the principate has been entrusted to him" (7). This principate, since it is contained within the very constitution and order of the Church, as a principal part, namely as the principle of unity and the foundation of perpetual safety, ought not to perish with the blessed Peter, but to be passed on to his successors, from one to another (8). Therefore, the Popes who succeed Peter in the Roman See, rightfully possess the supreme power of the Church. We define (1) Horn, on Penance, n. i in the appendix of the works of St. Basil. (2) Apoc. 3, 7. (3) John 10, 11. (4) Homily LXXXVIII, on John, n. 1. (5) II Thessalonians 2, 16. (6) Sermons, IV, chapter 2. (7) Epistles, Book V, Epistle XX. (8) St. Leo M., sermon III, chapter 3.

[*Latin ed. p. 730*]

730 ENCYCLICAL LETTER: The Holy Apostolic See and the Roman Pontiff hold primacy over the entire world, and the Roman Pontiff is the successor of the blessed Peter, the prince of the Apostles, and the true vicar of Christ, the head of the whole Church, and the father and teacher of all Christians, and to Him, in the blessed Peter, has been fully entrusted by our Lord Jesus Christ the power to feed, to rule, and to govern the universal Church; as is also contained in the acts of the ecumenical councils and in the sacred canons (1). Similarly, the Council of Lateran V: The Roman Church... by the will of God, holds primacy over all others by ordinary power, being the mother of all the faithful and the teacher. Preceding this was the consensus of antiquity, which has always observed and revered the bishops of Rome without any doubt, as the legitimate successors of the blessed Peter. But who is unaware of how extensive and how clear are the testimonies of the holy Fathers on this very matter? It is most renowned that Irenaeus, when speaking of the Roman Church, says that it is necessary for all churches to come together with this church because of its greater principal authority (2). And Cyprian also affirms that the Roman Church is the root and mother of the Catholic Church (3), the Chair of Peter and the principal Church, from which priestly unity has arisen (4). He calls it the Chair of Peter because it is where the successor of Peter sits; the principal Church because of the principality that was conferred upon Peter and his legitimate successors; from which unity arises, because in the Christian

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republic, the cause of unity is the Roman Church. Therefore, Jerome says with these words: When I speak to your Beatitude, that is, in communion with the Chair of Peter, I am speaking with the successor of the fisherman and the disciple of the cross. I know that the Church is built upon that rock (5). It is a solemn recognition for a Catholic to be known by his connection with the Roman See of Peter: If anyone is joined to the Chair of Peter, he is mine (6). And in a similar manner, Augustine, openly testifying, that in the Roman Church the principality of the Apostolic See has always been present (7), declares that he who is separated from the faith of Rome is not a Catholic.

(1) Concilium Florentinum.

(2) Contra Haereses, lib. III, cap. 3, n. 2.

(3) Epist. XLVIII, ad Cornelium, n. 5.

(4) Epist. LIX, ad eundem, n. 14.

(5) Epist. XV, ad Damasum, n. 2.

(6) Epist. XVI, ad Damasum, n. 2.

(7) Epist. XLIII, n. 7.

[*Latin ed. p. 731*]

ENCYCLICAL LETTER 731: It is not believed that one holds the Catholic faith, who does not teach that the Roman faith is to be observed (1). Also, Cyprian writes: To communicate with Cornelius is to communicate with the Catholic Church (2). Similarly, Abbot Maximus teaches that this is the mark of true faith and true communion: to be subject to the Roman Pontiff. Therefore, if a heretic does not wish to be, nor to hear, let him not satisfy either one or the other, but let him hasten to satisfy the Roman See for all. For this satisfaction, everywhere, all pious and orthodox men will proclaim it. For he speaks in vain who thinks that those similar to him can be persuaded, and who does not satisfy and implore the most blessed Pope of the Roman Church, that is, the Apostolic See. The reason and cause of this matter resides in the fact that from the very Incarnate Word of God, and from all saving Synods, according to the sacred canons and limits, He has received and holds the authority, power, and jurisdiction to bind and to loose, over all the holy Churches of God which are throughout the entire world, in all things and through all things. For when He binds and looses, even the Word in Heaven, which is the prince of the heavenly powers, is bound and loosed (3). He recalls what was in the Christian faith, which not one people, or one age, but all ages, and both the East and the West were accustomed to acknowledge and observe, and to which no one contradicts, Philip the presbyter, a legate from the Pope, to the Synodus of Ephesus: "To no one is it doubtful, indeed, it is known to all ages, that the most holy and blessed Peter, prince of the Apostles and head, the pillar of faith and the foundation of the Catholic Church, received the keys of the kingdom from

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our Lord Jesus Christ, the Savior of the human race and Redeemer, and that the power to loose and to bind sins was given to him, which, until this time and always, lives and exercises judgment in his successors" (4). And the same matter is present in the understanding of all in the decree of the Council of Chalcedon: "Peter spoke through Leo" (5): to which the voice of the Council of Constantinople III resounds, as if in an image: "The most high prince of the Apostles was with us in concert; for we had a supporter of his imitator and successor of the See..."

(1) Serai. C X X, n. 13.

(2) Epist. L V, n. 1.

(3) Defloratio ex Epistola ad Petrum illustrem.

(4) Actio III.

(5) Actio II.

[*Latin ed. p. 732*]

732. ENCYCLICAL LETTER. Peter spoke (1). In the formula of the Catholic profession conceived by Hormisdas, with words beginning in the sixth century, it is declared with great force: Because it cannot be overlooked that the Lord Jesus Christ said: "You are Peter, and upon this rock I will build My Church..." these things are proven by their effects, because in the Apostolic See, without any blemish, the Catholic religion has always been preserved (2). We do not wish to pursue each individual point; however, it is fitting to remember the formula of faith which Michael Palaeologus professed in the Second Council of Lyons: Also, the holy Roman Church possesses the supreme and complete primacy and principate over the entire Catholic Church, which it truly and humbly acknowledges that it received from the Lord Himself in blessed Peter, the prince or leader of the Apostles, of whom the Roman Pontiff is the successor, with the fullness of power (3). And just as, above all others, it is protected in defending the truth of the faith, so also, if any questions have arisen concerning the faith, they ought to be defined by its judgment (4). If the power of Peter and his successors is full and supreme, it must not be thought to be the only one. For He who placed Peter as the foundation of the Church, also chose twelve... whom He named Apostles (5). Just as the authority of Peter must necessarily remain perpetual in the Roman Pontiff, so also, the Bishops, who succeed the Apostles, inherit the ordinary power of these; thus, the order of Bishops necessarily touches upon the intimate constitution of the Church. Although they do not possess either full or universal authority, nor supreme authority, they are not to be considered vicars of the Roman Pontiff, because they exercise a power that is their own, and they are truly called ordinary pastors of the people whom they govern. But since there is only one successor of Peter, and many Apostles, it is fitting to understand what are the necessities of these with him, by

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divine constitution. — And first of all, the connection of the bishops with him who succeeds Peter is not obscure or doubtful; for, this connection being dissolved, the bond is loosened and dissolved.

(1) Actio XVIII.

(2) After Epistola XXVI, to all the Bishops of Spain, n. 4.

(3) Actio IV.

(4) Luke VI, 13.

[*Latin ed. p. 733*]

ENCYCLICAL LETTER 733 to all Christian faithful, so that in every way, one body and one flock may be formed: The salvation of the Church depends on the dignity of the supreme priest, to whom, if a certain and outstanding power is not granted by all, so many schisms will arise in the Church as there are priests (1). Therefore, it is fitting to consider this carefully: nothing was given to the Apostles separately from Peter; rather, more was given to them separately from the Apostles and separately to Peter. St. John Chrysostom, when discussing the words of Christ (John X, 21, 15), "Why do you ask me about this, leaving the others?" responded: "He was outstanding among the Apostles, both as a disciple and as the leader of that assembly (2)." For this one was designated by Christ as the foundation of the Church: to him alone was it permitted to bind and to loose, and to him alone was the power given to feed. Whatever authority and office the Apostles received, they received it together with Peter: the Divine dispensation, if it wished anything to be common to others with him as principal, never granted it except through him, and never denied it to others (3). So that, just as he received everything alone, nothing should pass to anyone without his participation (4). From this it is clearly understood that bishops are excluded from the right and power to rule if they knowingly separate themselves from Peter and his successors. For they are torn away from the foundation, upon which the entire building must rest; and therefore, they are excluded from the building itself. And for the same reason, they are separated from the flock, of which the supreme pastor is the leader, and from the kingdom, to whom the keys were divinely given to Peter alone.

From these things, we again recognize the divine design in establishing the Christian republic. For when the Divine Author decreed that the Church should be one in faith, in rule, and in communion, He chose Peter and his successors, in whom there would be a beginning and, as it were, a center of unity. Therefore, Cyprian says: "It is easy to prove the truth with a concise statement of faith." The Lord speaks to Peter: "I say to you, that you are Peter, and upon this rock I will build my Church." And although after His resurrection, He granted equal power to all the Apostles, and said: "As the Father has sent me, so I send you," nevertheless, in order to manifest unity, He showed that the origin of that same unity began with one.

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(1) St. Jerome, Dialogues Against the Luciferians, n. 9.
(2) Homily LXXXVIII on John, n. 1.
(3) St. Leo the Great, Sermon IV, chapter 2.
(4) Ibid.

[*Latin ed. p. 734*]

734 ENCYCLICAL LETTER: He arranged these matters with great care (1). And Optatus of Milevum wrote: "You cannot deny that it is known that the episcopal chair was conferred upon Peter in the city of Rome, in which Peter, the head of all the Apostles, sat; from which he was also called Cephas. In that one chair, unity was preserved by all: so that the other Apostles would not defend separate ones, lest he who placed another chair against the singular one would already be a schismatic and a sinner" (2). Hence, that very saying of Cyprian: heresy and schism arise from that which generates, namely, disobedience to due supreme authority: "For heresies have not arisen from any other source, nor have schisms been born, except from the fact that obedience is not given to the priest of God, nor is one considered in the Church, at one time a priest and at another time a judge, in the place of Christ" (3). Therefore, no one, except with Peter, can share in authority, since it would be absurd to think that one who is outside the Church could preside within the Church. Wherefore, Optatus of Milevum rebuked the Donatists by this name: "For we read that Peter, our leader, received the keys of salvation against those gates (of hell), to whom Christ said: 'To you I will give the keys of the kingdom of heaven, and the gates of hell shall not prevail against them.' Therefore, what is it that you contend to usurp the keys of the kingdom of heaven, who fight against the chair of Peter?" (4). But the order of Bishops is to be considered rightly joined with Peter, as Christ commanded, if they remain with Peter and obey him; otherwise, they necessarily fall into a confused and disordered multitude. For the proper preservation of the unity of faith and communion, it is not enough to hold the former positions for the sake of honor, nor to take care; but it is necessary to have true and the same authority, to which the entire community must obey. What did the Son of God intend when He promised the keys of the kingdom of heaven to Peter alone? The highest degree of power is designated by the name of keys in that place; the biblical usage and the consent of the Fathers do not allow for doubt. It is not permissible to interpret otherwise what was given either separately to Peter, or jointly to the Apostles with Peter. If the power to bind and to loose, and to feed, produces this in Bishops, successors of the Apostles, so that each one may truly govern his own people, certainly the same (1) *De Unit. Eccl*, n. 4. (2) *De Schism. Donat.*, book II. (3) Letter

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XII, to Cornelium, n. 5. (4) Book II, n. 4, 5.

[*Latin ed. p. 735*]

ENCYCLICAL LETTER 735: The same authority ought to belong to him to whom the duty of feeding the sheep and the flock has been assigned, by the authority of God: Not only the Shepherd (Peter), but the Shepherd of shepherds (Christ) was appointed: Therefore, Peter feeds the sheep, he feeds and the lambs, he feeds and the sons, he feeds and the mothers; he governs the subjects, he governs and the prelates, because besides the sheep and the lambs, there is nothing in the Church (1). Hence, those singular expressions of the ancients concerning the blessed Peter, which clearly proclaim him to be in the highest degree of dignity and power. They call him everywhere the prince of the assembly of disciples, the prince of the holy Apostles, the summit of that choir, the mouth of all the Apostles, the head of that family, the governor of the whole world, the first among the Apostles, the pillar of the Church. And Bernard seems to express this in these words to Pope Eugene: "Who are you? A great priest, the supreme pontiff. You are the prince of bishops, you are the heir of the Apostles... You are he to whom the keys have been entrusted, to whom the sheep have been entrusted. Indeed, there are others who are doorkeepers of heaven and shepherds of the flock; but you are all the more glorious, inasmuch as you have inherited both names, and in a different way, than the others. They have flocks assigned to them, each one to each one; to you, all are entrusted, to one, one, not only of sheep, but also of shepherds; you are the shepherd of all. Wherefore do you seek proof of this? From the word of the Lord. For to whom, not only of bishops, but even of the Apostles, were the sheep so absolutely and indiscriminately entrusted? "If you love me, Peter, feed my sheep." Which ones? Those of this or that people, city, or region, or of a certain kingdom? "My sheep," he says, clearly not designating some, but assigning all; nothing is excluded, where nothing is distinguished (2). It is indeed contrary to truth, and openly repugnant to the divine constitution, that individual bishops should be subject to the Roman Pontiffs; it is right; but that all should be subject, that is not right. For this is the cause and reason of the foundation, to protect the unity and stability of the whole edifice, rather than of its individual parts. Which is all the more true, in the matter of which we are speaking, because Christ, the Lord, willed that the Church be made strong by the power of its foundation, so that the gates of hell may not prevail against it. This divine promise is understood by all to apply to the entire Church, not to its individual parts, since indeed some of its parts can be overcome by the onslaught of hell, and some of them, in order to be overcome.

(1) St. Bruno, Bishop of Signia, Commentary on John, part III, chapter 21, no. 55.

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(2) De Consideratione, book II, chapter 8.

[*Latin ed. p. 736*]

756 A GENERAL LETTER comes to pass individually. Again, he who is placed in charge of the entire flock must have authority not only over the sheep scattered abroad, but over the very multitude gathered together. Does the entire flock govern its pastor? Are the successors of the Apostles, united together, the foundation upon which the successor of Peter leans, for the cause of stability? Indeed, to those in whose power are the keys of the kingdom, it belongs, not only in individual provinces, but in the entire world: and just as bishops in each region do not exercise their power privately for each individual, but also with true authority for the community, so too the Roman Pontiffs, whose power encompasses the entire Christian commonwealth, hold all its parts, even those gathered together, subject and obedient to their authority. Christ the Lord, as has already been said sufficiently, granted to Peter and his successors that they should be His vicars, and that they should perpetually exercise in the Church the same power that He Himself exercised in His mortal life. Is it to be said that the college of the Apostles surpassed their Master in authority? Truly, the Church has never failed to acknowledge and testify to the authority which is vested in the college of bishops, as the sacred writings so clearly declare. These are the pronouncements of the Councils: we read that the Roman Pontiff judged among all the prelates of the Churches; but we do not read that anyone judged Him (1). The reason for this is that no one possesses greater authority than the Apostolic See (2). Therefore, Gelasius wrote concerning the decrees of the Councils: "Just as that which the first See does not approve cannot stand, so that which it has judged to be judged, the entire Church embraces" (3). Indeed, it has always been the Roman Pontiffs who have ratified or annulled the deliberations and decrees of the Councils. The acts of the Council of Ephesus were annulled by Leo the Great; the Council of Ariminum was rejected by Damasus; the Council of Constantinople, by Hadrian I; and the 28th canon of the Council of Chalcedon, which lacked the consent and authority of the Apostolic See, is considered to be of no account. Therefore, rightly in the Council of Lateran V, Leo X (1) Hadrian II, in Allocution III to the Roman Synod in the year 869. Cf. Actionem VII of the Fourth Council of Constantinople. (2) Nicholas in letter LXXXVI, to Michael, Emperor. – It is clear that the Apostolic See, whose authority is greater than that of any other, cannot have its judgments retracted by anyone, nor can anyone judge its judgments. (3) Letter XXVI to the Bishops of Dardania, n. 5.

[*Latin ed. p. 737*]

ENCYCLICAL LETTER 737 establishes: That only the Roman Pontiff, who is present at a given time, possesses the full right and power, as the

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authority over all councils, to convene, transfer, and dissolve councils; and this is clearly demonstrated not only by the testimony of Holy Scripture, and by the words of the Fathers and other Roman Pontiffs, and by the decrees of sacred canons, but also by the very confession of those same councils. Indeed, the keys of the Kingdom of Heaven, which were entrusted to Peter alone, as well as the power to bind and to loose, which were conferred upon the Apostles together with Peter, are testified to by Holy Scripture: but that the Apostles received supreme power without Peter and against Peter, nowhere is it testified. Certainly, they did not receive it in any way from Jesus Christ. — For these reasons, the decree of the Vatican Council, which concerns the power and reason of the Roman Pontiff's primacy, is not a new opinion, but an ancient and constant assertion of faith, affirmed throughout all ages (1). Furthermore, it is not confusing for the same power to be subject to two authorities. To suspect such a thing is forbidden to us by the wisdom of God, whose counsel is this very arrangement of government. Moreover, it must be noted that the order of things would be disturbed and mutual relationships would be upset if two magistrates were in the same people of the same rank, neither subject to the other. But the power of the Roman Pontiff is supreme, universal, and completely of its own right: while the power of the bishops is defined by certain limits, and not completely of its own right. It is inappropriate that two should be established equally over the same flock. But it is not inappropriate that two should be established over the same people, when one is superior to the other; and according to this, both the parish priest and the bishop and the Pope are immediately over the same people (2). But the Roman Pontiffs, mindful of their office, desire above all to preserve whatever has been divinely established in the Church; therefore, just as they diligently guard and defend their own power, so also they constantly strive to ensure that the authority of the bishops is preserved. Indeed, whatever is granted to the bishops in terms of honor, whatever obedience is given, all of this they attribute to themselves. My honor is the honor of the universal Church. My honor is the solid strength of my brothers. Then I am truly honored when no honor due to each individual is denied (3). (1) Session IV, chapter 3. (2) St. Thomas in IV Sent., dist. XVII, a. 4, ad q. 4, ad 3. (3) St. Gregory M., Letters, book VIII, epistle XXX, to Eulogius. Acta, Vol. XXVIII, page CCCXXXVI. 47

[*Latin ed. p. 738*]

738 ENCYCLICAL LETTER. Having expressed, as faithfully as possible, the image and form of the Church according to divine constitution, we have diligently pursued matters concerning unity, explaining sufficiently what kind of unity it is, and by what principle the divine Author willed it to be preserved. We do not doubt that those to whom it has happened, by divine grace and favor, to live within the bosom of the Catholic Church, as if born from it, will hear our apostolic voice: "My sheep hear my voice. And

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I know them: and they follow me." (1) And from this, it will be easy for them to be more fully instructed, and with a more willing heart to adhere to their pastors, and through them to the supreme Pastor, so that they may more safely remain within the one fold, and receive greater abundance of its salutary fruits. But when we look to the Author of faith, and the consummator, Jesus Christ (2), whose vicarious power we exercise, though unworthy of its dignity and office, our spirit is inflamed by his charity; and we do not use without reason the words that He spoke of Himself, but apply them to ourselves: "And other sheep I have that are not of this fold: them also I must bring. And they shall hear my voice: And there shall be one fold and one shepherd." (3) Therefore, let those who have so widely detested wickedness not refuse to hear and to obey our paternal charity, those who acknowledge and confess Jesus Christ to be the Son of God, and also the Savior of the human race, but who nevertheless wander far from His Bride. It is necessary for those who take Christ to take the whole Christ: for Christ is the whole head and body: the head is the only-begotten Son of God, the body is His Church: the bridegroom and the bride, two in one flesh. Whoever dissent from this Head, according to the Holy Scriptures, and are found in all places where the Church is defined, are not in the Church. And again, whoever agree with this Head according to the Holy Scriptures, and do not communicate with the one Church, are not in the Church (4). With equal care, our spirit flies to those whom the pestilent influence of wickedness has not completely corrupted, and who at least desire to have the true God, the Creator of heaven and earth, as their Father. These, indeed, should consider and clearly understand within themselves that they cannot be numbered among the sons of God, unless they join to themselves their brother Jesus Christ, and also the Mother Church. Therefore, all, following the very sentiment of Augustine himself, are earnestly urged to...

(1) John 10:27.

(2) Hebrews 12:2.

(3) John 10:16.

(4) St. Augustine, Against the Donatists, Letter, or On the Unity of the Church, chapter IV, paragraph 7.

[*Latin ed. p. 739*]

ENCYCLICAL LETTER 739, Lamus: Love the Lord God our Creator, and love the Church of His. Love Him as Father, and love this as Mother. Let no one say: "I go to idols, I consult soothsayers and augurs, but I do not abandon the Church of God: I am Catholic." Holding the mother, you offend the Father. Another also says: "May it be far from me, I do not consult augurs, I do not seek divination, I do not seek sacrilegious prophecies, I do not go to worship demons, I do not serve stones: but nevertheless, I am with the party of Donatus." What profit is there to you if the Father

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is not offended, when you offend the Mother? What profit is there if you confess the Lord, you honor God, you preach Him, you acknowledge His works, you confess Him sitting at the right hand of the Father, and you blaspheme His Church? ... If you had a patron to whom you paid daily homage; if you spoke of one crime against his spouse, would you enter his house? Therefore, beloved, hold fast together to God the Father and the Church, the Mother (1). We commend to the Lord, with fervent prayers, all those whom we have considered in this prayer, trusting greatly in the mercy of God, who can most powerfully move the hearts of men, and who can move them where He wills and to what He wills, and we commend them to His benevolence. To our Venerable Brothers, to the clergy and to the people, we impart, through Christ our Lord, the Apostolic Blessing. Given at Rome, near Saint Peter, on the 29th of June, in the nineteenth year of Our Pontificate. LEO XIII. (1) *Enarratio in Psal. LXXXVIII, sermo II, n. 14.*

[*Latin ed. p. 740*]

740 FROM THE CONSISTORY ACTS REGARDING THE CONSISTORY HELD on June 22, 1896. The Most Holy Father Leo XIII, in the Vatican Palace, held a secret Consistory, in which he pronounced the following ADDRESS: Venerable Brothers, Moved by duty, as we consider the needs of the churches, and wishing to assist your esteemed College in every way, We desire to speak to you about a certain plan which We have undertaken, which seems to be able to contribute greatly to the interests of the Christian cause. — The Mother Church has never lacked zeal in recalling and inviting back those whom, whether through disagreement of opinion or error of mind, had been calamitously drawn away from her bosom; but in these recent years, through the circumstances of affairs which you know well, it has come to pass that these efforts of the Church have intensified. And already, it has been possible to perceive some fruits of these endeavors, which give hope and encourage the purpose; especially because judgments are becoming less obscure in the separated nations, as if inclining their minds with benevolence towards her, and looking towards this Chair of Peter with a desire for the ancient communion. We, considering these things greatly before God, and if We have accomplished anything thus far, guided by apostolic charity, We earnestly desire to be able to offer much greater assistance, through teaching and action, to those who seek the Kingdom of Christ in truth. And since the most important aspect of Christian doctrine, and as it were the foundation, is contained in the understanding of the Church, therefore We have resolved to present the image and form of the Church, as expressed by divine constitution, to the public; especially in order that the admirable sign of unity, which was divinely bestowed upon her, may shine forth more clearly. Indeed, those who approach and contemplate the Church, as the holy fathers and doctors have constantly preserved

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her in the East and West, as the monuments of every kind illustrate from the very beginning, must, through the grace of the heavenly Spirit, necessarily strive that those who are divided may receive encouragement and light to seek unity, and that those who are already partakers of this great benefit may make it even greater and cherish it more diligently.

[*Latin ed. p. 741*]

FROM THE ACTS OF THE CONSISTORY 741: We are about to convene the council, and it is our intention to issue encyclical letters to all Bishops. And it pleases Us to entrust these documents to the patronage of the most blessed Peter and Paul, the principal Apostles, whose precepts, labors, and blood gloriously consecrated the beginnings of the Church, the one Bride of Christ. We communicate this matter to you, Venerable Brothers, and join our spirit with your deliberations. We have deemed worthy of such honor several men, distinguished by their virtues and talents, who have demonstrated their loyalty, faith, and devoted will to the Apostolic See; especially those who have deservedly earned this through various missions and services. These are: DOMINICUS MARIA IACOBINI, titular Archbishop of Tyre, Apostolic Nuncio in Lusitania. ANTONIUS AGLIARDI, titular Archbishop of Caesarea, Apostolic Nuncio in Austria-Hungary. DOMINICUS FERRATA, titular Archbishop of Thessaloniki, Apostolic Nuncio in Gallia. SERAPHINUS CRETONI, titular Archbishop of Damascus, Apostolic Nuncio in Hispania. What do you think? Therefore, by the authority of Almighty God, and of the holy Apostles Peter and Paul, and by Our own authority, We create and publicly proclaim the following as Cardinals of the Holy Roman Church: DOMINICUS MARIA IACOBINI, ANTONIUS AGLIARDI, DOMINICUS FERRATA, SERAPHINUS CRETONI. Furthermore, We create two other Cardinals of the Holy Roman Church, whom We reserve in Our heart, to be made known at Our discretion. With the necessary and appropriate dispensations, derogations, and clauses. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen. Having concluded this address, the Most Holy Father proposed the following churches: The titular archiepiscopal church of Sardica, vacant due to the death of the Most Reverend Bonaventure Maria Soldatich, the last Archbishop of that see, with the favor of the Most Reverend Father Paul de Sanctis, Bishop of Mandelensis.

[*Latin ed. p. 742*]

742 FROM THE CONSISTORY ACTS: The Metropolitan Church of Utina is vacant, due to the death of the Most Reverend John Mary Berengo, the last Archbishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Father Peter Zamburlini, Bishop of Concordia. The titular Archiepiscopal Church of Sebastian is vacant, due to the succession of the Most Reverend Father Placid Louis Chapelle to the Metropoli-

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tan See of the Holy See in America, with the favor of the Most Reverend Father Amyngius Taliani, a priest of the Diocese of Ascoli in Piceno. He was born of legitimate, Catholic, and honorable parents in the place commonly called Montegallo in the Diocese of Ascoli in Piceno, and having reached his fifty-ninth year, he received the doctorate in sacred theology and in both canonical and civil law. He served as an auditor for the Apostolic Legations in Munich and Paris, and having resigned from the office of Apostolic Delegate and Intimate Chamberlain to His Holiness, he was subsequently appointed among the Prelates of the Pontifical House and Apostolic Protonotaries, and he has now resigned from the office of Auditor of the Sacred Roman Rota and Vicar of the Patriarchal Basilica of the Lateran. The titular Archiepiscopal Church of Aelopolitan is vacant, due to the assignment of the title of Saint Bartholomew in the Island to the Most Reverend and Most Illustrious Lord Mario, Cardinal Mocenni, now Bishop of Sabina, with the favor of the Most Reverend Father Augustine Accoramboni, a priest of Rome. He was born of legitimate, Catholic, and honorable parents in Rome, and having surpassed his seventy-second year, he received the doctorate in sacred theology and in both canonical and civil law, and he served as Professor of sacred liturgy and sacred archaeology in the Pontifical College of Urban in the Congregation for the Propagation of the Faith, and he was included among the Censors of the Liturgical Academy and Apostolic Ceremonial Masters. He has now resigned from the office of Apostolic Protonotary, as well as from the offices of Referendary of the Signature, Substitute of the Secretariat for supplicating briefs, and Canon of the Patriarchal Basilica of the Lateran. The Metropolitan Church of Syracuse is vacant, due to the death of the Most Reverend Benedict La Vecchia Guarneri, the last Archbishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Joseph Fiorenza, a priest of Monreale. He was born of legitimate, Catholic, and honorable parents in Monreale, and having reached his fifty-fourth year, he taught Italian and Greek letters in the archiepiscopal seminary of Monreale, and he was first a Canon Theologian of the Metropolitan Church and then a Canon Parochial, and he has now resigned. He was also elected Ordinary Prelate for the diocese of nullius S. Lucia, although he never assumed administration of that diocese. The Archiepiscopal Church of Lanciano, with perpetual administration of the Cathedral Church of Ortona, is vacant, due to the death of the Most Reverend Francis Petrarca, the last Archbishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Angel Delia Cioppa, a priest of Capua. He was born of legitimate, Catholic, and honorable parents in the place now called Bellona, in the archdiocese of Capua, and having reached his fifty-sixth year, he recently received the doctorate in sacred theology, and he served as a parish priest and then as Rector of the archdiocesan seminary, and he has now resigned from the office of Canon Penitentiary of the Metropolitan Church of Capua. The

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Cathedral Church of Cortona is vacant, due to the death of the Most Reverend John Baptist Laparelli Pitti, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Father Guy Corbelli, hitherto titular Archbishop of Pelusa. The Cathedral Church of Pisa is vacant, due to the death of the Most Reverend John Anthony Benini, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Father Julius Matleoli, Bishop of Soana-Pitilian. The Cathedral Church of Pistoia is vacant, due to the death of the Most Reverend Clement Fares,

[*Latin ed. p. 743*]

FROM THE CONSISTORY ACTS - 743. The Cathedral Church of Feretrano is vacant, following the death of the Most Reverend Father Camillo Buggeri, the last Bishop to have died outside the Roman Curia, by the favor of the Most Reverend Father Vincent Franceschini, Bishop of Fossombrone. The Cathedral Church of Ugento is vacant, following the death of the Most Reverend Father Vincent Brancia, the last Bishop to have died outside the Roman Curia, by the favor of the Reverend Father Aloysius Pugliese. He, born of legitimate, Catholic, and honorable parents in Ceriniola, and having reached the sixty-fifth year of his age, having served as Professor in the seminary and as Parish Priest at S. Maria de Monte Carmel in Ceriniola, has now renounced the office of Canon of the Cathedral Church of Ceriniola, and has been appointed Auxiliary Bishop, with succession to the Cathedral Church of S. Agatha in Gothorum, by the favor of the Most Reverend Father Ferdinand Gieri, titular Bishop of Canopita. The Cathedral Church of Balneoregina is vacant, following the death of the Most Reverend Father Hercules Boffi, the last Bishop to have died outside the Roman Curia, by the favor of the Reverend Father Eutitius Parsi, a priest of the Diocese of Viterbo. He, born of legitimate, Catholic, and honorable parents in Centumcellae, and having reached the fiftieth year of his age, having been granted a doctorate in sacred theology, served as Rector of the diocesan seminary in Viterbo, and subsequently as Deputy and Professor of dogmatic theology. The Cathedral Church of Assisi is vacant, following the death of the Most Reverend Father Nicanor Thomas Priori, the last Bishop to have died outside the Roman Curia, by the favor of the Reverend Father Aloysius De Persiis, a priest of Alatri. He, born of legitimate, Catholic, and honorable parents in Alalria, and having surpassed the sixty-first year of his age, having been granted a doctorate in sacred theology as a member of the Pontifical Seminary of Pius, and having renounced the office of Professor of moral theology in his native seminary and Canon of the Cathedral Basilica, having also served as Examiner pro-Synodal and pro-Vicar General. The Cathedral Church of Fossombrone is vacant, following the translation of the Most Reverend Father Vincent Franceschini to the Cathedral See of Fano, by the favor of the Reverend Father Dionysius Alexandri, a priest of

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Assisi. He, born of legitimate, Catholic, and honorable parents in Assisi, and having reached the sixty-first year of his age, having been granted doctorates in philosophy, sacred theology, and both laws as a member of the Pontifical Seminary of Pius in Rome, having served as Professor of moral theology, Rector of the Seraphic Seminary, and Examiner pro-Synodal, and having been honored with the dignity of First Prior in the Cathedral Church. The Cathedral Church of Mandela, with the attached title of the Abbey Church of S. Salvatore Maior, is vacant, following the promotion of the Most Reverend Father Paul De Sanctis to the titular Archbishopric of Sardica, by the favor of the Reverend Father Dominic Ambrose, a priest of the Diocese of Ferentino. He, born of legitimate, Catholic, and honorable parents in Ceccano, of the Diocese of Ferentino, and having surpassed the fifty-second year of his age, having been granted doctorates in both laws, having served as Diocesan Visitator, and having renounced the office of Canon and subsequently Archpriest of the Collegiate Church of S. Giovanni Battista. The Cathedral Churches of S. Marco and Bisignano, perpetually and canonically united, are vacant, following the translation of the Most Reverend Father Stanislaus de Luca to the See of S. Severo, by the favor of the Reverend Father Charles Vincent Ricotta, a priest of Fodiano. He, born of legitimate, Catholic, and honorable parents in Fodiano, and having reached the forty-sixth year of his age, having first renounced the office of Rector of the Church of S. Augustine in Fodiano, having served as Spiritual Director of the Seminary and Diocesan Visitator, and having subsequently obtained the parish of S. Giovanni Battista.

[*Latin ed. p. 744*]

744 FROM THE CONSISTORY ACTS: The Cathedral Church of Concordia is vacant, due to the promotion of Reverend Father Peter Zamburlini to the Metropolitan Church of Udine, with the favor of Reverend Francis Isola, a priest of the archdiocese of Udine. He was born of legitimate, Catholic, and honorable parents in the place called Montenars of the archdiocese of Udine, and having reached the forty-sixth year of his age, he was recently granted a doctoral degree in canon law, and was appointed a canon of the Metropolitan Church of Udine, and subsequently elected General Vicar for spiritual affairs of the same archdiocese, and then, with the see vacant, Vicar Capitular. The Cathedral Church of Calatanissetta is vacant, due to the death of the Most Reverend John Baptist Gultadauro, the last Bishop of that see, who died outside of Rome, with the favor of Reverend Ignatius Zucearo, a priest of Palermo. He was born of legitimate, Catholic, and honorable parents in Palermo, and having reached the fifty-sixth year of his age, he has served as Deputy of the seminary for clerics and as Pro-Synodal Examiner, and is a close confidant of His Holiness, serving in the Papal Chamber above the number. He has resigned from the position of Canon and Treasurer of the Metropolitan Church of Palermo, and also from the

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position of General Pro-Vicar for spiritual affairs of the same archdiocese. The Cathedral Church of Neumagen is vacant, due to the death of the Most Reverend John Alfred Gilly, the last Bishop of that see, who died outside of Rome, with the favor of Reverend Felix Augustus Béguinot, a priest of the archdiocese of Bourges. He was born of legitimate, Catholic, and honorable parents in the place commonly called Bannay, of the archdiocese of Bourges, and having reached the sixtieth year of his age, he has resigned from the position of Canon and ornamentarian of the Metropolitan Church of Bourges, and also from the position of General Vicar for spiritual affairs of the same archdiocese. Regarding the Consistory held on June 25, 1896. The Metropolitan Church of Auch is vacant, due to the death of the Most Reverend John Leo Gouzol, the last Archbishop of that see, who died outside of Rome, with the favor of Reverend Father Matthew Victor Balain, Bishop of Nice, upon the nomination of the most illustrious man Felix Faure, President of the French Republic. The Metropolitan Church of Tours is vacant, due to the death of the Most Reverend René Cardinal Meignan, a priest, the last Archbishop of that see, who died outside of Rome, with the favor of Reverend Father René Francis Renou, Bishop of Amiens, upon the nomination of the most illustrious man Felix Faure, President of the French Republic. The Metropolitan Church of Toulouse is vacant, due to the death of the Most Reverend Julian Florian Cardinal Desprez, a priest, the last Archbishop of that see, who died outside of Rome, with the favor of Reverend Father Francis Desiderate Mathieu, Bishop of Angers, upon the nomination of the most illustrious man Felix Faure, President of the French Republic. The Metropolitan Church of Avignon is vacant, due to the death of the Most Reverend Aloysius Joseph Mary Angel Vigne, the last Archbishop of that see, who died outside of Rome, with the favor of Reverend Father Louis Francis Sueur, Bishop of Évreux, upon the nomination of the most illustrious man Felix Faure, President of the French Republic. The Cathedral Church of Teruel is vacant, due to the death of the Most Reverend Anthony Estalella and Sivilla, the last Bishop of that see, who died outside of Rome, with the favor of Reverend Father John Comes and Vidal, Bishop of Minorca, upon the presentation of the Most Serene Queen Catholic Regent. The Cathedral Churches of Trieste and Justiniana Prima are perpetually and canonically united, and are vacant, due to the translation of Reverend Father John Glavina to the titular Episcopal Church of Theodosiopolis, with the favor of Reverend Father Andrea Sterk, Bishop of Veglia, upon the nomination of Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary.

[*Latin ed. p. 745*]

FROM THE CONSISTORY ACTS 745: The Cathedral Church of Segurina is vacant, due to the death of the Most Reverend Anthony Ochoa and Arenas, the last Bishop, who died outside the Roman Curia.

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This vacancy is presented with the favor of the Reverend Joseph Mary Caparros and Lopez, a priest of the Diocese of Carthage, to the Most Serene Queen Regent. The Reverend Joseph Mary Caparros and Lopez, born of legitimate, Catholic, and honorable parents in the place called Ceheguin, in the Diocese of Carthage, having surpassed his fifty-seventh year, having previously received the doctoral degree in sacred theology, and having diligently performed the office of parish priest in various places to the great satisfaction of the individual Ordinaries, has renounced his position as Archpriest of the Cathedral Church of Madrid. The Cathedral Church of Amiens is vacant, due to the promotion of the Reverend Father Denis Renou to the Metropolitan See of Tours, with the favor of the Reverend John Mary Leo Dizien, a priest of the Archdiocesan See of Sens, upon the nomination of the most illustrious man, Felix Faure, President of the French Republic. The Reverend John Mary Leo Dizien, born of legitimate, Catholic, and honorable parents in the place commonly called Cure, in the Archdiocesan See of Sens, and having reached his first year beyond fifty, having diligently performed the duties of Vice-Parish Priest in the Metropolitan Church, subsequently renounced his position as Canon and Honorary Vicarius General there. The Cathedral Church of Ebro is vacant, due to the promotion of the Reverend Father Louis Francis Sueur to the Metropolitan See of Avignon, with the favor of the Reverend Mary Simeon Henry Colomb, a priest of the Diocese of Valence, upon the nomination of the most illustrious man, Felix Faure, President of the French Republic. The Reverend Mary Simeon Henry Colomb, born of legitimate, Catholic, and honorable parents in Valencia, and having reached his fifty-third year, having been granted the Canonry in the Cathedral Church of Valencia, and currently serving as the General Vicarius in spiritual matters for that diocese, has renounced that office. The Cathedral Church of Carnutes is vacant, due to the death of the Most Reverend Francis Lagrange, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Bonus Gabriel Arthur Mollien, a priest of the Diocese of Amiens, upon the nomination of the most illustrious man, Felix Faure, President of the French Republic. The Reverend Bonus Gabriel Arthur Mollien, born of legitimate, Catholic, and honorable parents in the place commonly called Chaulnes, in the Diocese of Amiens, and having surpassed his fiftieth year, having previously held the office of Canon and Honorary Vicarius General in the same Cathedral Church of Amiens, has renounced that office. The Cathedral Church of Nantes is vacant, due to the death of the Most Reverend August Laroche, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Peter Emilius Bouard, a priest of the Diocese of Dijon, upon the nomination of the most illustrious man, Felix Faure, President of the French Republic. The Reverend Peter Emilius Rouard, born of legitimate, Catholic, and honorable parents in the place commonly called Montigny-sur-Aube, in the Diocese of Dijon, and having

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reached his fifty-seventh year, having previously held the office of General Vicarius in spiritual matters and Canon in the Cathedral Church of Dijon, has renounced that office. The Cathedral Church of Nicaea is vacant, due to the promotion of the Reverend Father Matthew Victoria Balain to the Metropolitan See of Auch, with the favor of the Reverend Henry Louis Chapon, a priest of the Diocese of Saint-Brieuc, upon the nomination of the most illustrious man, Felix Faure, President of the French Republic. The Reverend Henry Louis Chapon, born of legitimate, Catholic, and honorable parents in the city of Saint-Brieuc, and having reached his fiftieth year, having previously held the office of Canon and Honorary General Vicarius in the Cathedral Church of Nantes, has renounced that office. The Cathedral Church of Vaison is vacant, due to the death of the Most Reverend Julius Cleret, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Peter Joseph.

[*Latin ed. p. 746*]

746 FROM THE CONSISTORY ACTS: Geay, a priest of the archdiocese of Lyons, concerning the nomination by the most illustrious Mr. Felix Faure, President of the French Republic. Reverend Father Peter Joseph Geay, born of legitimate, Catholic, and honorable parents in the place called Saint-Symphorien-sur-Coise, in the archdiocese of Lyons, and having surpassed his fifty-first year, has resigned from his position as Canon and Parish Priest of the Primatial Church of Lyons. The Cathedral Church of Andegaven is vacant due to the promotion of Reverend Father Francis Desiderali Mathieu to the Metropolitan See of Toulouse, with the favor of Reverend Father Louis Julius Baron, a priest of the diocese of Versailles, nominated by the most illustrious Mr. Felix Faure, President of the French Republic. Reverend Father Louis Julius Baron, born of legitimate, Catholic, and honorable parents in the place commonly called Vaugrigneuse in the diocese of Versailles, and having reached his fifty-eighth year, having resigned from his position as a parish priest in his diocese, was subsequently chosen among the chaplains of Saint Genevieve in Paris, where he undertook the care of souls in several places. Finally, he was promoted to the parish church of Our Lady of the Fields in that city. The titular episcopal church of Parnassen is vacant under Archbishop Mocisseno, with the favor of Reverend Father John Baptist Schneider, a priest of the archdiocese of Vienna; who was also appointed as an Auxiliary Bishop with the title of Saint Mary of the Angels in the Thermal Baths of the Holy Roman Empire. Reverend Father John Baptist Schneider, born of legitimate, Catholic, and honorable parents in Gaunersdorf in the archdiocese of Vienna, and having surpassed his fifty-sixth year, having received a doctoral degree in sacred theology and having served as a professor of dogmatic theology at the Imperial and Royal University of Vienna, later resigned from his position as a parish priest at Saint

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Augustine, and finally as a Canon of the Metropolitan Church. The titular episcopal church of Arcen is vacant under Archbishop Meliten, due to the death of the Most Reverend Claude Marie Dubois, the last bishop of that see, who died outside the Roman curia, with the favor of Reverend Father Albert Leo Maria Le Nordez, a priest of the diocese of Coutances; who was also appointed as an Auxiliary Bishop to Reverend Father Peter John Pagis, Bishop of Verdun. Reverend Father Albert Leo Maria Le Nordez, born of legitimate, Catholic, and honorable parents in the place commonly called Montebourg in the diocese of Coutances, and having surpassed his fifty-second year, having resigned from his position as General Vicar and titular Canon of the Cathedral Church in Virodun, was co-opted among the Apostolic Protonotaries above the number, as if participating. The titular archiepiscopal church of Tarsen is vacant due to the death of the Most Reverend Sigismund Felix Felinski, the last Archbishop of that see, who died outside the Roman curia, with the favor of Reverend Father Nicholas Averardi. He was born of legitimate, Catholic, and honorable parents in the town of S-Aegidii in the diocese of Monts Alti, and having surpassed his fifty-second year, having resigned from his position as an auditor of the Sacred Roman Rota, Judge of the Commission of Appeals for resolving disputes with the administrations of the Apostolic Palace, and Regent of the Sacred Penitentiary. The church of Clavarense, with the favor of Reverend Father Fortunal Vinelli, titular Bishop of Epiphaniensis. The titular episcopal church of Europen is vacant due to the translation of Reverend Father Mariano Supervia and Lostale to the Cathedral See of Huesca, with the favor of Reverend Father Caietan Quattrocchi, a priest of the diocese of Fano-Fossombrone-Cagli-Pergola; who was also appointed as an Auxiliary Bishop to Reverend Father Antoninus Mary Saeli, Bishop of Mazaren. Reverend Father Caietan Quattrocchi, born of legitimate, Catholic, and honorable parents in Mazaren in the diocese of Fano-Fossombrone-Cagli-Pergola, and having reached his forty-sixth year.

[*Latin ed. p. 747*]

From the Consistorial Acts, 747. The Reverend Father, first elected secretly by the Bishop of Platiensis, taught philosophical and theological disciplines in the seminary of that city; subsequently, he resigned as rector, and then as administrator of the same seminary, until the present time. The Monastery of the Most Holy Mary of Einsiedeln, of the Order of St. Benedict, of the Nullius or Curial jurisdiction, is vacant, following the death of the Reverend Mother Basila Oberholzer, the last Abbess who died outside the Roman Curia. With the favor of Reverend Father Columba Brugger, a priest of Basileensis and a member of the same Order of St. Benedict, expressly professed, he was elected by the Reverend Fathers and Brothers of the Chapter of that Monastery as Abbess, according to the custom. After these matters, Our Most Holy Lord made known that

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he had, through his formal Brief Letters recently issued, dispensed the following prelates: Archbishops: of Tarsensem, Nicholas Averardi; of Laodicensem, Raphael De Martinis; of Philippopolitanum, Franciscus Lesné; of Philippensem, Bernardus de Iesu; of Bukarestiensem, Franciscus Xaverius Hornstein. Bishops: of Hieropolitanum, Franciscus Mora; of G-adarensem, Nicholas Joseph Camilli; of Clavarensem, Fortunatus Vinelli; of Epiphaniensem, Franciscus Bourne; of Aungelaeum, Patricius Foley; of Alalium, Michael Hohan; of Pinarensem, Ioannes Josephus Glennon; of Anchialensem, Casimirus Pinera et Naredo; of Polemoniensem, Petrus Broyer; of Cori/cium, Ludovicus Perez Perez; of Oensem, Ioannes Baptista Grosgeorge; of Cimaeum, Horatius Mazzella; of Europensem, Caietanus Quattrocchi; of Echinensem, Alaphridus Curiis; of Iustinianopolitanum, Hugonem Mac Sherry; of Thymbriensem, Camillus Van Bonslé; and the Abbess of Einsidlensem, Columbanus Brugger. Regarding the VICENTINA diocese, there was a doubt concerning the giving of a blessing to a woman after childbirth, whose child had died without baptism. In the calendar of the Vicentina diocese for the year 1894, a matter was proposed, and in group meetings, a question of conscience was raised concerning the blessing of the woman after childbirth, whose child had died without baptism.

[*Latin ed. p. 748*]

748. Having departed from the established custom, the Reverend Canon, who presided over those same gatherings, concerned about the observance of liturgical laws, humbly proposed the following question to the Sacred Congregation of Rites for a suitable solution, with the consent of the Reverend Bishop of Vicenza: Namely: Whether, according to the decree issued by the Sacred Congregation of Rites on September 12, 1857, in Moline, number X X, it is permissible to administer the Blessing of a woman after childbirth, according to the Roman Ritual, to a woman whose child has died without baptism; or whether one should abstain from administering that Blessing? And the same Sacred Congregation, after considering the earnest opinion of one of the Masters of the Apostolic Ceremonies and another of its own Consultors, and after the question was presented by the Most Reverend and Right Reverend Lord Cardinal Andrea Steinhuber, in the ordinary meetings held at the Vatican, decided that an answer should be given: That the blessing should not be denied. On May 19, 1896. All of these matters having been presented to the Most Holy Lord Pope Leo XIII through the undersigned Cardinal, Prefect of the same Sacred Congregation, His Holiness approved and confirmed the decree of the same Sacred Congregation. On June 8 of the same year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

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QUESTION: It is asked whether the general decree of August 27, 1894 (1) has the force of obliging all religious congregations of both sexes.

The Sacred Congregation of Rites inquired: Whether the general decree issued by the same Sacred Congregation of Rites on August 27, 1894, by which, in order to remove all ambiguity and to introduce uniformity, the method of making and renewing vows within the Mass is established, has the force of obliging all religious congregations of both sexes?

And the Sacred Congregation of Rites, after carefully considering the report of the undersigned Secretary, decided that an answer should be given to the question: Affirmative, when the vows are pronounced or renewed within the Mass, before the celebrant holding the Sacred Host. And thus it was decreed. On June 5, 1896.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

(1) Reported in Volume XXVII, page 187.

[*Latin ed. p. 749*]

FROM SACRED CANONS 749, DECREE. The faithful fulfill the precept of the Church by attending Mass celebrated by Bishops or others, which is permitted for the convenience of the Bishops. FROM THE CITY AND THE WORLD. Many Sacred Prelates presented humble petitions to the Most Holy Lord Leo XIII, that He would deign to relax the disposition of the Decree, issued on August 22, 1818, (1) concerning the fulfillment of the precept of attending Mass in the Episcopal Chapel, for the good of the faithful and for the honor of the Episcopal dignity. Furthermore, the Sacred Congregation of Rites, by order of the Most Holy Lord Himself, carefully considered this matter, and, having heard the opinion of the Liturgical Commission, to which the question was proposed by the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, in Ordinary Meetings held in Vatican on the date indicated, decided to respond as follows: "It should be requested from the Most Holy [Pope] that, from now on, all Bishops, whether diocesan or titular, should enjoy the same privilege as the Cardinals; namely, that not only they themselves may celebrate Mass in their own residence chapel, or over a portable altar, wherever they may be, and may permit another Mass to be celebrated for their convenience; but also that all the faithful, by attending either of these Masses, may fulfill the precept of the Church, whenever it is necessary; all contrary provisions notwithstanding." On May 19, 1896. With all of the above related to the Most Holy Lord Leo XIII by myself, the undersigned Cardinal, His Holiness, considering the judgment of the Sacred Congregation to be valid, deigned to extend the privilege of the Cardinals to all Bishops in communion with the Apostolic See, on June 8 of the same

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year. CARD. ALOISIUS MASELLA, Prefect of the Sacred Congregation of Rites. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites. BRUNEN. A doubt concerning the rite of blessing a secular Prelate. In a report on the state of the Church of Brunensis presented to the Sacred Congregation of the Council on February 26, 1894, it was declared that secular Prelates, the Dean and Archdeacon of the Cathedral Chapter, as well as the Prefect of the Collegiate Church of Nicolsburg, are, by Apostolic privilege, adorned with an abbatial blessing, as if they were Abbots. Since, as it is read in the Roman Pontifical, the abbatial blessing is considered by some to be less suitable for secular Prelates, who do not have a people subject to them, nor a rule, (1) Recole Vol. XXVI, 391.

[*Latin ed. p. 750*]

750 CONCERNING the observance of ceremonies and other similar matters, therefore, the Most Reverend Monsignor Francis Bauer, Bishop of Brünn, desiring to satisfy both his own and the wishes of other Bishops, humbly requested from the Apostolic See: and whether, and in what manner, certain variations might be made in the aforementioned blessing, when conferring it upon secular Prelates, according to the Roman Pontifical. Furthermore, at the request of one of the Masters of the Ceremonies of the Apostolic See, and another of the Consultors of the Sacred Congregation of Rites, when the Most Reverend and Most Reverend Monsignor Cardinal Andreas Steinhuber, in the Ordinary Assemblies held at the Vatican on the aforementioned date, proposed a question for discussion concerning the rite of blessing a secular Prelate. The Sacred Congregation, after mature deliberation on all matters, decided to respond as follows: Nothing shall be altered in the Pontifical, but the same Sacred Congregation of Rites shall respond in each case, adapting the formula to the specific circumstances, except for those things which are clearly unsuitable for secular Prelates. On May 19, 1896. Subsequently, all of these matters were reported to the Most Holy Lord Pope Leo XIII, by the undersigned Cardinal Prefect of the Sacred Congregation of Rites, and His Holiness approved and confirmed the resolution of the aforementioned Sacred Congregation, on June 8 of the same year.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites.

L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

FROM THE SACRED CONGREGATION FOR INDULGENCES OF MONTEPULCIANO. Concerning the Plenary Indulgence attached to the Papal Blessing, to be granted by the Bishop bestowing it. The Bishop of Montepulciano proposed the following question to this Sacred Congregation: Can the Bishop himself, who bestows the Papal Blessing, also gain the Plenary Indulgence from the faithful who receive it in the name of the Supreme Pontiff? And the Reverend Fathers in the General

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Congregation held at the Vatican on March 5, 1896, responded: Affirmative. And the Most Holy and Most Holy Lord Pope Leo XIII, in an audience granted by the undersigned Sacred Cardinal Prefect on May 20, 1896, benignly approved the response of the Reverend Fathers. Given in Rome, from the Secretariat of the same Sacred Congregation, on May 20, 1896.

ANDREAS CARD. STEINHUBER, Prefect.

L. * S. A. ARCHIEP. NICOP., Secretary.

[*Latin ed. p. 751*]

FROM THE SACRED CONGREGATION FOR INDULGENCES, 751, OF THE ORDER OF PREACHERS. Concerning the erection and aggregation of confraternities. The Procurator General of the Order of Preachers humbly presented the following questions to this Sacred Congregation for Indulgences, to be resolved:

I. Whether the condition in the Clementine Constitution, "Quaecumque," regarding the consent of the local Ordinary and the testimonial letters, which must be observed in the erection and aggregation of confraternities, should be understood as requiring two distinct acts, namely, consent and testimonial letters; or rather, whether implied consent expressed in the testimonial letters is sufficient?

II. Whether the summary of indulgences, which is given along with the diploma in the erection of confraternities, and which has already been recognized and approved by the Sacred Congregation for Indulgences, also requires a new recognition from the local Ordinary?

III. Whether a distinct community, which the Decree of the Sacred Congregation for Indulgences requires to be established on a certain day in Lodi, January 31, 1893, for the erection of confraternities of the same name and institute, can also be constituted in any town within that same municipality, with a location and name distinct from others, so that several confraternities of the same name and institute can be erected within the same municipality?

IV. Whether, in large states, which constitute only one community, several confraternities of the same name and institute can nevertheless be erected?

V. Whether the erection of confraternities of the Most Holy Rosary, made through letters granted by the Most Reverend General of the Order of Preachers, and entrusted for execution to a priest, whether regular or secular, appointed by the same Most Reverend General, is valid, if the Ordinary expresses his consent beforehand, but does not grant any testimonial letters?

VI. Whether these letters themselves are valid if they are provided with the signature and seal of the same Most Reverend General, or if they do not specifically designate a priest for execution, or if they do not specify

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the location where the confraternity is to be erected?

Then, the following requests were presented:

I. a) Regarding the past: That all confraternities of the Most Holy Rosary, which are found to be irregular or affected by a defect of nullity, for whatever reason, due to a lack of testimonial letters, diplomas of concession, or any other kind of deficiency, regardless of the distance of the location, be remedied in their root, and, if necessary, be newly erected by the authority of the Apostolic See, while retaining the privileges granted by the RR. PP. of the Order of Preachers.

b) Regarding the future: For the greater increase of the members of the Most Holy Rosary, it is requested that the Most Reverend General of the Order of Preachers, and his Vicar, have the faculty, as they also have for other Orders with the consent of the Holy See, to act in the same way with Provincials and Bishops, even in Europe, but not in Italy.

[*Latin ed. p. 752*]

752 REGARDING INDULGENCES, the Holy See acts beyond Europe, holding diplomas in reserve, while observing the same regulations and conditions given by the Most Holy Fathers. II. So that, in large cities, where the number of inhabitants exceeds a thousand, three or four Confraternities of the Most Holy Rosary may also be established, with a special mandate from the Holy See, and may flourish. III. So that these two last requests may also be extended to two other Confraternities of the Most Holy Name of God, as well as to the Militia of the Angelic Doctor, St. Thomas Aquinas. And the Most Eminent and Reverend Cardinals, in the general assemblies held in the Vatican Palace on March 5, 1896, responded as follows: Regarding Question I: The Ordinary's letters, in which he signifies his consent to the erection or aggregation of Confraternities, and commends the piety and religion of the Institute, are sufficient. Regarding II: Negatively. Regarding III: Affirmatively, provided that in each town there is also a proper Parish. Regarding IV: Negatively: but it should be requested of the Holy See that, by derogating from the aforementioned Constitution of Clement VIII, which begins "Quaecumque," it may graciously grant the Ordinaries the faculty of providing, according to their judgment and prudence, in each case, while observing, in such erections, the distance that is judged appropriate. Regarding V: Negatively. Regarding VI: Negatively. Regarding the requests: Concerning I. a) Affirmatively. b) It is not necessary. Concerning II: Sufficient provision has already been made in the response to Question IV. Concerning III: Provision has already been made in the response to the two preceding requests. After a report on all matters was made to the Most Holy Lord Pope Leo XIII in an audience held on May 20, 1896, by the undersigned Cardinal Prefect of the Sacred Congregation, His Holiness ratified and confirmed the resolutions of the Most Eminent Fathers, and, by derogating from the Constitution of Clement VIII, graciously granted the

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Ordinaries the faculty requested in Question IV. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on May 20, 1896. ANDREAS CARD. STEINHUBER, Prefect. L. © S. A. ARCHIEP. NICOPOL, Secretary.

[*Latin ed. p. 753*]

753 A SUMMARY OF THE DOCUMENTS CONTAINED IN THIS VOLUME XXVIII: LETTERS AND ACTS OF THE BLESSED POPE.

Letter of His Holiness Pope Leo XIII to the Reverend Father Picard, Prefect of the Augustinian Sodality of the Assumption, in which their work in encouraging the Easterns to restore unity with the Catholic Church is commended, page 3.

Letters of His Holiness Pope Leo XIII to the Ordinaries of Belgium, concerning the social question.

Letters of His Holiness Pope Leo XIII to the Prefect of the Society of Jesus, concerning the advancement of the Catholic cause among the Copts.

Encyclical Letter of His Holiness Pope Leo XIII, concerning the Rosary of Mary.

Letters of His Holiness Pope Leo XIII to His Eminence Cardinal Marian of Rampolla, regarding public clamors, completed in Rome on September 20, 1895.

Letters of His Holiness Pope Leo XIII, granting several indulgences for December 15, 1895, on which solemn occasion the jubilee feast of Saint Joseph, Spouse of the Virgin Mary, is celebrated.

Apostolic Letter of His Holiness Pope Leo XIII concerning the Patriarchate of Alexandria of the Copts.

Acts, Volume XXVIII, page CCCXXXVI.

Letters of His Holiness Pope Leo XIII to the Reverend Lambert Eygenraam, director of the periodical "De Tijd," and its associates, writers.

Motu Proprio of His Holiness Pope Leo XIII, concerning the harmonious advancement of the Catholic cause among the Orientals.

Letter of His Holiness Pope Leo XIII to the Bishops of Hungary.

Encyclical Letter of His Holiness Pope Leo XIII, concerning the unity of the Church.

From the EMINENT AND SACRED COUNCIL of Hispalis:

Regarding parochial jurisdiction; it is discussed whether the discipline should be maintained whereby several Parish Priests reside in the same Church, with a distinct census of souls.

Regarding rights; it is inquired whether a new college of mansionaries has the right to participate in the increase of Mass offerings.

In Urgellen, doubts concerning testimonials to the religious orders; it is resolved that, for clerics to be ordained, who are already devoted to

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the military service, letters of recommendation from the Ordinary of the diocese in which they have resided for three months are required.

In Boien, doubts concerning the proper Bishop for the religious order; it is doubted.

[*Latin ed. p. 754*]

754 SUMMA. Whether the acts of a treasury acquire the character of true benefits... 50 Bergomen, concerning testaments; the question is whether a parish or the fabric of the church should be designated in a will. 71 Gratianopolitan, concerning suspension and removal from a parish; the matter is whether the decrees of the Curia concerning the priest Giraud should be upheld. 77 Calatayeronen, concerning the foundation of canonries; the question is between the Chapter and the Bishop whether the new canonries should enjoy all the rights and privileges that the old ones enjoy. 91 Vladislavien, concerning the nullity of marriage; the sentence of the Curia is confirmed, which had declared the marriage to be validly begun. 97 Rhemen, concerning canonical insignia; it is asked whether canons can enjoy the privileges granted to the titular canons in honor. 111 Barchinonen, concerning the faculty of itinerancy; the privilege of saying only one Mass is granted. 118 Romana, concerning a doubt regarding the application of the Mass; it is resolved that the priest who celebrates at funerals is not bound to apply the Mass, provided he does not receive a fee. 125 Melevilana, concerning the right of choosing procurators; it is asked whether the Chapter has the right to choose procurators for the administration of the goods of the Collegiate Church. 137 Brunen, concerning the right and manner of presenting honorary canons; certain norms are presented by the Ordinary for the election of honorary canons and are sanctioned. 148 Parisien, concerning a dispensation from marriage; a dispensation is granted concerning a marriage that is valid but not consummated. 154 Cremonen, concerning parochial rights; it is asked whether a church, built near a hospital, enjoys the privilege of exemption from the parish. 161 Mediolanen, concerning pontificals; it is decreed that the parish priest of the city no longer has the right to perform pontificals. 170 Lugdunen, concerning a dispensation from marriage; a dispensation is granted concerning a marriage that is valid but not consummated. 179 Concerning the translation of the Tridentine Decrees into other languages. 190 Nanceiensis and Tullensis, concerning a dispensation from marriage; the matter is a dispensation concerning a marriage that is valid but not consummated. 205 Tolosana, concerning a dispensation from marriage; a dispensation is granted concerning a marriage that is only valid. 217 Castrimaris, concerning the right of inscription in the clergy; it is disputed whether a priest can be inscribed in the assembly of the Church, with the title of Jesus and Mary. 224 Novarien, concerning funerals; there is a doubt concerning the funerals of certain bodies. 233 Orilana, concerning the rights of confraternities; the question is raised con-

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cerning precedence. 239 Velitema, concerning parochial jurisdiction; it is doubted to whom it should be granted from.

[*Latin ed. p. 755*]

SUMMARY OF CASES concerning two parish priests within the jurisdiction of Cologne, regarding a dispensation from irregularity; the dispensation concerning the offering of Mass for the people in Gaeta; since the diocese is subject to two kingdoms civilly, and certain days are holidays in one, while being days of precept in the other, it is asked whether all parish priests are obligated to offer Mass for the people on those days.

In Vrhbosnen, or Sarajevo, concerning the cohabitation and communal life to be observed by the canons of the Cathedral Chapter; the Ordinary asks whether he can obligate the canons to a communal life.

In Ianuen, regarding the rights pertaining to the Chapel dedicated to the Blessed Virgin Mary; various doubts concerning the administration of the Chapel's goods.

In Nolana, concerning the payment of the half-yearly dues; doubts regarding the payment of the half-yearly dues.

In Oveten, concerning marriage; it is doubted whether a marriage, begun through a procurator, is valid, due to the alleged revocation of the mandate.

In Burdigala, concerning the nullity of a marriage; the sentence of the episcopal court is confirmed, which declared the marriage invalid.

In the Canton of Ticini, a request from the Bishop concerning the custom of the Cathedral Chapter in the choral service.

In Vasten, concerning marriage; the sentence of the episcopal court is confirmed, which had declared the marriage valid; however, a dispensation is granted, since it is only considered valid.

In Vigilen, concerning a beneficial right; a new examination is ordered to be held for the theological position, and the acts of the examination are to be sent to the Apostolic Datary.

In Treviris, concerning a dispensation from marriage; it is resolved that it is not proven that the marriage was not consummated.

In Albingana, concerning marriage; the opinion of a more experienced physician is requested, who, after examining the reports of the physicians, will report whether it is proven that the woman was impotent before the marriage, with a permanent and incurable impotence.

In Arianen, concerning burdens; the question concerns the reduction of burdens.

In Parentina, regarding the presentation of rights to parochial benefices.

In Liburnen, regarding the rights of a confraternity; it is doubtful whether the decree of the Ordinary, by which the confraternity was dissolved, can be maintained.

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In Burdigala, or Petrocoria, concerning the nullity of a marriage; the sentence of the episcopal court is confirmed, which denied that there was any proof of the nullity of the marriage.

In Annecien, concerning a dispensation from marriage; a dispensation is granted concerning a marriage that was consummated but not ratified.

In Galtellinora, concerning parochial rights; there is a dispute between the chapter and the parish priest regarding certain parochial rights.

In Agrigento, concerning a dispensation from marriage; a dispensation is granted, after a prior review of the proceedings.

[*Latin ed. p. 756*]

756 SUMMA: To a certain man forbidden to contract a second marriage, after consultation with the Most Holy Congregation, 543 Varsavian: concerning the nullity of a marriage; it is decided that the nullity of the marriage does not exist, although serious doubts are raised regarding its validity, due to the presumed fault of the parish priest.

590 Policastren: concerning rights; a dispute arises regarding the claim of certain rights arising from admission into the clergy of the Church.

649 Fodiana: concerning the sanctuary, commonly called "dell'Incoronata," the faculty is granted to reduce Masses to a shorter form.

657 Squillacen: concerning the erection of a parish; the erection of a parish is permitted under the condition that a suitable church be built within three years.

662 Parisien: concerning the nullity of a marriage; it is decided that the nullity of the marriage does not exist.

666 E X S. CONG. RITUUM: A doubt regarding the use of electric light.

53 Doubts concerning the office of the Patrons or Titular members.

53 San Miniato: concerning the beatification of the venerable Servant of God, Theophilus a Curte.

55 Decree, by which it is established that the feast of the Annunciation of the Blessed Virgin Mary shall be celebrated with a double rite of the first class.

57 Romana, or Lucernis: concerning the beatification of the venerable Servant of God, John Baptist Cioni.

58 Concerning the recitation of litanies.

67 Concerning the publication of books of devotion.

68 Concerning the recitation of litanies.

68 Concerning the additions to be made in the litanies of the Saints.

68 s Eporedien: concerning the confirmation of the cult rendered to the Servant of God, Thaddeus Machar, Bishop of the Diocese of Cork, now blessed.

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186 Romana: concerning the beatification of the Servant of God, Mary Aloisia Mauritii.

251 Urbis et Orbis: Privileges granted, renewed on the twenty-fifth anniversary since Saint Joseph was declared the patron of the entire Catholic world.

254 S. Iacobi de Chile: Doubts concerning the rights and privileges of titular Bishops who are admitted among the capitulars.

304 Lingonen: a doubt concerning a votive office.

309 A doubt concerning the litanies of the Most Holy Heart of Jesus.

310 Admonitions concerning the opening of the Holy Tabernacle, concerning the distribution of Holy Communion to the faithful, and concerning the carrying of the relics of the Blessed in public supplications.

310 Congregation of the Presbyters of the Most Holy Sacrament: doubts concerning the commemoration of the Most Holy Sacrament and other matters.

376 Neapolitana: concerning the beatification of the Servant of God, Francis of Naples.

377 Subiacens: concerning the beatification of the Servant of God, Father Marian of Arce Casali.

379

[*Latin ed. p. 757*]

SUMMARY OF ACTIONS of the City and the World; concerning the obligation of celebrating Mass, according to the Church Calendar, in which it is celebrated. 438 Quebecen, various doubts. . . 440 Rome, a doubt concerning the psalm "From the depths," after the Office for the Dead. 442 Recent blessing permitted by the Holy Congregation of Rites. . . . . 442 Almerien. A doubt concerning the carrying of the image of the Blessed Virgin Mary in processions with the Most Holy Sacrament. 503 Annecien. A doubt concerning the use of the sacred oils of the previous year in the blessing of a font. . . . 504 Bisarchien. A doubt concerning the singing of prayers or hymns in the vernacular language during Mass. 504 General Decree concerning the anniversary of the dedication of a church. . . . 505 A doubt concerning days within the octave of a major or minor feast. 506 Viglevenan. Various doubts. . . 507 Naples, concerning the beatification and canonization of the handmaid of God, Sister Mary Julian, from the Most Holy Sacrament. . . . 508 A doubt concerning conventual Mass. 561 Platien. Various doubts. . . . 561 Decree, by which the feast of Saint Thomas, Bishop and martyr of Canterbury, is raised to a double minor feast for the entire Church. 562 Quebecen, various doubts. . . . 563 Rome, concerning the intonation of the angelic hymn, and other things. . . 564 Basileen. Various doubts. . . . 565 Rome. A doubt concerning the days on which Mass is forbidden in private oratories. 637 Piacenza, in Spain. A doubt concern-

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ing the use of "telae Nipi" for making vestments. 637 Naples, concerning the beatification of the venerable handmaid of God, Mary Crucified, by the wounds of Our Lord Jesus Christ. . . . 686 Rome, or Praenestina, and Trent, concerning the beatification of the venerable servant of God, Stephen Bellesini. . . . 689 A doubt is raised: are religious, who, on the occasion of preaching, celebrate in various churches, subject to the obligation of celebrating according to the Church Calendar in the church in which they celebrate? 693 Rescript, by which to the Fathers of the Order of Saint Francis, at the request of the churches of Assisi, it is granted to celebrate a votive Mass of Saint Francis in the chapel of the Porziuncola, etc. . . . . 693 Senogallien. A doubt concerning the exposition of the image of the deceased in the tomb, while the funeral rites are being performed. 694 Amalfitana. A doubt concerning votive offices, granted once a month. 694 Of the Order of Friars Minor; a doubt concerning the privilege, formerly granted to those in Spain, of singing Mass according to the form of the Church of Toledo. 695 Gerunden. Doubts concerning the administration of the sacraments of Holy Communion and Extreme Unction to nuns of the Cistercian Order, and concerning the translation of their remains. 696

[*Latin ed. p. 758*]

758 SUMMARY OF ACTIONS of the City. Doubts regarding votive offices 697 Vahen, and Sulmonen. Doubt regarding the suspension of funeral wreaths, so that they may remain on the walls of the Church. 697 Ruthenen. It is decided that one must respond according to the calendar of the place, and not according to the celebrant, regarding Masses celebrated in chapels, Episcopal Seminaries, etc. 698 Vicenza: Doubt regarding the blessing to be given to a woman after childbirth, whose child has died without baptism. 747 Doubt: It is asked whether the general decree of August 27, 1894, has the force of obliging any religious congregations of either sex. 748 Decree: The faithful fulfill the precept of Holy Church by hearing the Mass of the Bishop, or of others, permitted for the convenience of the Bishop. 749 Brunen: Doubt regarding the rite of blessing a secular prelate. 749 EXCELLENT CONGREGATION OF INDULGENCES Regarding the publication of books without the license of the Holy Congregation of Indulgences. 65 Rescript, by which to all Christians reciting, before or after Communion, the Eucharistic Hymn: "Adoro te," etc., a hundred days' indulgence is granted. 188 Indult, by which dispensation is granted from a new blessing for the scapulars of the Most Holy Trinity, when another is taken by the faithful, after the first, having been worn or consumed. . . . . 256 Rescript, by which indulgences are attached to the Prayer to the Virgin Mary for the return of churches dissenting from the unity of the faith. 501 Regarding the new consent of those to whom it pertains, in the case in which the Stations of the Way of the Cross are renewed. 502 Montis Politia: Regarding the plenary Indulgence attached to the Papal Blessing, to be obtained by the

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Bishop, when he grants it. . . . . „ . . 750* Order of Preachers. Regarding the erection and aggregation of Confraternities. 751 EXCELLENT APOSTOLIC PENITENTIARY. Doubts regarding the absolution of an accomplice in a heinous sin. 444 Doubt regarding fasting. 446 It is permitted to eat meat and fish to those dispensed from the law of abstinence. 447 Vows made by a Protestant. 574 FROM THE SECRETARY OF BREVES Brief of His Holiness Pope Leo XIII, by which the constitutions of the Congregation of the Most Holy Sacrament are approved. 312 Decree, by which it is declared that one may safely proceed to the solemn veneration of the blessed Theophilus a Curte. 426 Decree by which it is declared that one may safely proceed to the solemn veneration of Bernardinus Realinus. 431

[*Latin ed. p. 759*]

759 SUMMARY OF ACTS: Brief document of His Holiness Pope Leo XIII, concerning: Regarding wives who follow the rite of their husbands, more privileges are granted to them... 195 Concerning places subject to the Holy Land, Letters of Benedict XIV concerning the observance of fasting 683 EXCERPTS FROM CONSISTORY PROCEEDINGS: Concerning the Consistory held on November 29, 1895 Concerning the Consistory held on June 22, 1896 740 FROM THE SACRED CONGREGATION OF THE HOLY OFFICE: Concerning the manner of venerating the Blessed Virgin Mary by the Sodality of Issoudun, and concerning images of the same Blessed Virgin Mary 61 Catholics interested in the Masonic sect 63 Concerning the publication of sacred books 63 Concerning the denunciation of sects, to whom and by whom it must be made 64 Concerning missionaries with regard to barbarians who are baptized or are to be baptized 65 Concerning the reading of periodical publications 66 Whether it is permissible to give or bring relics of the Saints to the Turks 66 Concerning the administration of the sacraments to a woman who, on the occasion of marriage, passes to the Greek rite 66 Concerning the recitation of the Confiteor in the administration of the Holy Eucharist 67 Concerning the printing of litanies 67 Doubts concerning the administration of the sacraments, to be performed by Latins towards the Orientals 193 Concerning dispensations from fasts, and from the observance of feasts, for servants and workers, among lords of diverse rites residing there 193 Doubts concerning fasting 317 Concerning the eating of prohibited foods among non-Catholic heretics 318 Doubts concerning Greeks, residing in Rome, concerning the eating of meat on the Sabbath 319 A doubt concerning positive law, to be communicated to new Christians 319 Concerning a dispensation from fasting 321 Concerning a dispensation for the Chinese from fasting 321 A doubt concerning the hearing of Mass by neophytes 322 Concerning fasting 322 A doubt concerning surgical operations, not directly tending to the killing of the fetus in the mother's womb, etc. 383 The law concerning the non-mixing of fish with meat during Lent, also obligates those who enjoy an indulgence.

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449 Doubts concerning fasting 449 Does a prince or lord have judicial and coercive power over his subjects? 450 Concerning the censure of clerics who are presumed to have contracted civil marriage 450 Doubts concerning the Gauls, who foster mortal hatred towards the murderers, or those who carry the bodies of their parents 451 Doubts concerning blacks and other wild people 453 Concerning mancipation among Christian Cambodians 454 Modifications to Apostolic Letters.

[*Latin ed. p. 760*]

700 A summary of actions concerning the granting of matrimonial dispensations.

512 Three societies are condemned in the United States of America.

569 Letters from Cardinal Monaco to the Ordinary of Alexandria regarding matters concerning lard.

570 A decree by which the greater excommunication is imposed upon Priest Miraglia, unless he repents within fifteen days.

571 Doubts concerning the decree regarding the anticipation of the laws of fasting and abstinence by Bishops.

572 Whether Christians are obligated to defend an unfaithful king and his equally hostile enemy, while being threatened by his subjects.

574 A doubt concerning the sale of slaves.

574 Doubts concerning the purchase of slaves.

575 Doubts concerning unions between slaves among the Gauls.

576 A doubt concerning expenses to be made for the worship of ancestors.

581 Bonzus, in requesting the true religion, asks whether he may retain those things which he had compared in the ethnic office.

582 Doubts concerning a loan given to Jews for money.

583 A decree by which, specifically, number 85 of the annual regulations is condemned.

638 A doubt concerning a proper name, to be retained in the catalogs of sects.

699 A doubt concerning damage caused to ethnic temples.

700 Answers given concerning a certain contract.

700 Answers given concerning certain contracts which are considered to be tainted by usury.

704 From His Excellency the Episcopal Delegate of the Canaries; the faculty of appealing by "telephone" is granted to confessors who are far from the Monastery of Religious.

255 From St. Joseph of Costa Rica; full restitution is not granted.

302 Oran: concerning property and expulsion; the benefit of full restitu-

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tion is denied.

366 Rome: concerning a reduction in pension; it is determined that it is subject to retention of 7 in every hundred, etc., of the pensions, according to the norm established by the Most Holy [Father], while other pensions are not subject to this.

408 Novara: concerning a pension; the reduction of the pension owed by the Novara episcopal table to the fathers of the Somaschan congregation is denied.

416 Novara: concerning a benefice; the judgment of the Court, which declared the parish vacant and the parish priest to have lapsed from his office, is confirmed, according to the established manner.

419 Canaries: A doubt concerning the dependence of Religious on the Ordinary of the diocese in which they reside.

499 A decree by which the collection of alms is regulated.

[*Latin ed. p. 761*]

SUMMARY OF ACTIONS: Women in pious institutions, dedicating themselves to God in order to perform works of mercy, in Ã□vila. Doubts concerning regular clergy, whether expelled, or having received dispensation from the Apostolic See, etc., in Ã□vila. Doubts regarding the interpretation of the Decree concerning the exemption: it is required whether the Community of the Good Shepherd in Nancy-Toul is subject to the diocesan Ordinary concerning the administration of goods, etc., in Saint-Dié. Regarding the faculty of hearing confessions and preaching; the canons regular are restored to the faculty of hearing confessions and preaching. From the Apostolic Datary: Letters concerning dispensations for marriage. From the Sacred Congregation for the Propagation of the Faith: The agreement between the prelates of the Leopolis province concerning the Latin and Greek rites is approved. Regarding pious meditations, read by girls in churches. Concerning the transition from one rite to another among the Eastern Christians. Concerning the mixture of rites. Concerning the hearing of the Mass. Letters from the Prefect to the Archbishop of Quebec, concerning neutral schools. Concerning the dispensation from fasting and abstinence in the case of the coincidence of the beginning of the Chinese year with the first days of Lent. Concerning the dispensation of vows. Letters from the Prefect concerning the obligation to take an oath by missionaries. Doubts concerning the interpretation of the decree under number 196 of the Council of Baltimore. Letters from the Prefect, in which it is indicated that a Catholic priest can assist at the marriages of Protestants, as a civil minister. From the Sacred Congregation for the Propagation of the Faith. Decree by which certain books are prohibited to many. Decree by which certain books are

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prohibited to many.

[*Latin ed. p. 762*]

762 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are contained in the following words: Benefice concerning possession. Canons, honorary. Canons, concerning nomination. Domicile. Bishop concerning Religious. Testimonial letters. Marriage. Application of Masses. Nuns, simple vows. Parish priest. Pilgrims concerning burial. Precedence. Restoration to integrity. Benefice concerning possession. Canons, honorary. Corporal possession of a benefice cannot be lawfully acquired by one's own authority; but when the license or consent of the legitimate Superior intervenes, one can take possession of one's benefice, without anyone else introducing him into it. page 425. The rule of the Apostolic Chancery regarding three years' possession remedies any defect in the corporal taking of possession of a benefice, to the extent that, after this lapse of time, it is presumed to have been regular, ibid. Although the foregoing can be invoked, when it is a question of benefices in general, they nevertheless admit of an exception in the case of resigned benefices: in these, possession must be taken in the manner prescribed by the aforementioned Gregorian Bull, and that under penalty of nullity, and no other methods equivalent to this are permitted. Therefore, since the priest Fazio did not comply with the prescription of the Gregorian Bull, the Holy Congregation rightly confirmed the sentence of the Novara court, and rejected the appeal, ibid. Honorary canons may indeed use the privileges and insignia of canons, but only in the church to which they belong, for the sake of honor, and in which capitular functions are performed, excluding other churches, even within the same diocese, or in other dioceses, page 118. Therefore, it is not permissible for honorary canons of a certain chapter to wear the insignia of that chapter, so that they may perform sacred duties individually and separately from the chapter, in any church, ibid. Canons concerning nomination. Nominations, even of titular canons, cannot be made without the consultation of the local Ordinary, where the cathedral or collegiate church is located. page 153. Only the patron has the right to nominate to a benefice, and certainly not to institute in it, or to grant insignia; this belongs to the Bishop, ibid. The acceptance of the nomination must be requested from the same local Ordinary, either by the one nominating, or by the one nominated, ibid.

[*Latin ed. p. 763*]

INDEX G Domicile. It must be considered that someone is a native of that diocese or place in which, at the time of their birth, their father had his domicile established, page 233. This rule is not invalidated by the fact

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that someone may be born elsewhere, provided that their parents sought a different location for the purpose of office, legation, or business, as long as the domicile remains firm; for, by a legal fiction, they are considered to be born in the place of their domicile, ibid. The son follows the father's origin, whenever he is born by accident in a place where the father had a temporary stay, ibid. In the matter of expulsion, the predecessors of the Priest Antoninus never abandoned their proper domicile in the city of Castrimaris, with the intention of remaining elsewhere permanently, ibid. The Bishop concerning Religious. Once the Bishop has granted the faculty of hearing confessions or preaching, this cannot be revoked at will, because such a deprivation, being a penalty, requires a proportionate cause. Indeed, in the case of revoking the aforementioned faculty from the Canons Regular of the Lateran Palace, no other reason was available than the fact of the violent dispossession by the parish of Mattineuria, which was not legitimate, page 682. Although the Bishop can, for a just cause, refuse to grant the faculty of hearing confessions or can withdraw a faculty already granted to religious individually, according to Conc. Trid. sess. 23 de Reform, cap. 15, nevertheless, when it is a matter of all religious collectively, or of a single community, he cannot do so without the consent of the Holy See, due to the danger of scandal, as is also evident from the subsequent decree of the Sacred Congregation of Bishops and Regulars, dated November 20, 1615. "Although it has repeatedly and frequently decreed and declared that local ordinaries cannot, nor ought to, withdraw the faculty of hearing sacramental confessions from all members of a single community of regular canons, the Sacred Congregation, without consulting [them], has ordered that the aforementioned faculty be restored... The Fathers of the Sacred Congregation, having carefully considered the matter, and believing that it would be difficult to prevent this from happening without scandal and great harm to souls, in order to remove all cause for scandal... decree and decide that archbishops, bishops... cannot, under any circumstances, withdraw the faculty of hearing confessions from all members of a single community of regular canons, the same Sacred Congregation, without consulting [them]." ibid. Testimonial letters. Those who are addicted to military service must present, in order to be able to be promoted to the Sacred Orders, testimonial letters from the Ordinary of any diocese in which they have resided for three months, page 50. Whenever, from the circumstances, the letters of the Ordinary do not constitute complete proof, the Bishop, before ordination...

[*Latin ed. p. 764*]

764 GENERAL INDEX: A collation, when fully executed, can serve as a substitute for an oath, provided that the faculty for this has been previously requested from the Holy See, if one wishes to avoid the suspension threatened by the Apostolic Constitution. Ibid. Marriage. Invincible ignorance, or even good faith, cannot effect that a marriage, rendered invalid

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and null by an impediment, becomes valid; because the laws that render marriage invalid also affect those who are ignorant. Page 110. Marriage contracted through a procurator, both before the Council of Trent and after the promulgation of that Council, is validly contracted, provided that the conditions prescribed in chapter 12, section 6, regarding procurators, are observed. Page 352. These conditions are: a) a special or determinate mandate given to a specific person, to contract marriage not with any person, but with a specific and designated person by the mandator; b) that, just as the mandate to grant a delegation must not be impeded in any way, so the procurator must voluntarily accept the office offered to him; c) that the procurator must execute the mandate himself, and may not delegate it, unless such a faculty has been expressly given to him; d) that the mandate must not have been revoked before the celebration of the marriage, neither explicitly, which revocation is sufficient in the forum of conscience; nor implicitly (e.g., if the mandator contracts marriage with another), which is valid even in the external forum, provided it can be proven. And the revocation is valid even if it is unknown to both the procurator and the party to be married. Ibid. Therefore, it is not necessary that the revocation be made in the same manner, and with the same reasoning, as the mandate was granted; but it is sufficient that it has been revoked, and that this can be proven in the external forum. Ibid. In the case of the marriage with Damasa, contracted through a procurator by Emmanuele, it was decided that it was valid, because the explicit revocation made by Emmanuele was not proven; but the implicit revocation, which occurred when he himself contracted marriage with Anne, took place when the marriage with Damasa had already been celebrated. Page 353. However, the dispensation requested by Damasa was granted, because it appeared from the records that the marriage had not been consummated, and indeed could not have been consummated; and that there were very serious reasons that suggested such a dispensation. Ibid. The respect due to a superior cannot be invoked indiscriminately to avoid an obligation, otherwise there would be no place for a valid contract in the presence of parents, if any pretense of respect were allowed to be used as an excuse. Page 400. The fear of reverence only falls away from a steadfast man, and therefore does not invalidate a marriage, unless it is the father or mother, or

[*Latin ed. p. 765*]

INDEX (General) If threats, or menaces, or any blows, or at least importunate and insistent requests, are added, ibid. Regarding the impediment of force and fear, no one is admitted to challenge a marriage from this head, unless it is alleged that they have suffered violence and coercion, ibid. It is not permitted for Bishops, without special permission for each case, to receive insistent requests and to institute a process in order to condemn a marriage dispensation granted by the Holy See, ibid. When, under oath,

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both spouses have declared that they have never attempted to consummate the marriage, and if the bride is not a virgin, nor has the groom resided in the bride's house at Tarifa, credit must be given to their oath, even if proof cannot be obtained, ibid. And this even more so if witnesses from each side of the spouses, with the addition of an oath, affirm that they firmly believe the spouses' confession to be true, and that they have such a delicate conscience that they are incapable of uttering a lie or perjury, page 401. Among the legitimate causes for dispensing with a validly contracted marriage, doubts regarding its validity arise: danger to the soul, fear of scandal and its proper remedy; aversion of affections and no hope of restoring peace, and finally, according to the practice of the Sacred Congregation, a civil action begun with another, ibid. 765 The intention of the Council of Trent, Session XXII, chapter 1, concerning reforms, was to establish a new, substantial form for the valid celebration of marriages, by which it would be publicly evident in the external forum of the fact of the marriage celebration, page §18. Such a public form of celebration was established because, due to human wickedness, grave sins arose from clandestine marriages; it happened that many, having abandoned their first wife, with whom they had secretly contracted marriage, would take another publicly, and live in perpetual adultery with her, ibid. Therefore, if the fact of the marriage celebration is publicly and externally evident, its validity is easily not undermined by subtle arguments and sophistries of those who are interested, so that no one would renounce it, ibid. The burden lies on those who oppose the validity of the marriage to bring forth certain and undeniable arguments, by which it is demonstrated that a cause for nullity existed; as if the parish priest was absent, or another, acting by delegated jurisdiction, failed in the actual celebration of the marriage, ibid. Moral certainty, which is necessary to render judgment, can arise even from conjectures, presumptions, indications, and any additions, provided that it arises from the totality of the circumstances, ibid. The right of the parish priest, or Ordinary, to substitute another priest for him, at least with regard to validity, is derived from...

[*Latin ed. p. 766*]

766 INDEX GENERALIS: Terms pertaining to common law in Trent; from which no obstacle is prepared. The presumption favors the validity of marriage whenever it has been celebrated according to the form prescribed in Trent, before a parish priest and two witnesses, and when, during the very act of celebration, there intervenes the free consent of both contracting parties, page 679. Exceptions raised against the validity of a marriage duly celebrated must be considered as null and void, unless they are so compelling and effective that they immediately demonstrate the alleged nullity, whether arising from a lack of free consent or from some other invalidating cause, ibid. Marriage is, in itself, a certain solemn and public act, which should always be considered valid, unless evident reasons

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clearly demonstrate its nullity, ibid. The application of the Mass. It is one thing to celebrate Mass, and another to apply it, page 128. A priest can apply the fruit of the Mass for those from whom he received alms, even for the living, even though he is wearing black vestments. ibid. And therefore, in performing funeral rites for the deceased, just as in celebrating marriages, a priest is not obligated to apply the Mass for the same deceased, or for the spouses, unless he receives a stipend for that purpose. ibid. Nuns taking simple vows. The greatest difference exists between nuns taking solemn vows, and the recently established congregations of sisters taking simple vows. The former strictly belong to the religious state, are subject to the rigor of the canons, both concerning the renunciation of property, and concerning the observance of the papal enclosure, they form houses that are autonomous and independent, and participate, according to their capacity, in the privileges of the Regular Orders. On the contrary, the latter, in a broad sense, belong to the religious state, retain the radical ownership of goods, are subject only to the episcopal enclosure and to the Ordinary passively, they have a generalate government, and *by themselves do not participate in the privileges of the Regular Orders, page 634. Hence it follows that the legal provisions enacted for institutes of nuns taking solemn vows, are not always applicable to institutes of sisters taking simple vows, since they are two entities of different nature: indeed, the Constitution of Gregory XV, *Inscrutabili*, whether from the time it was issued, or from the purpose for which it was intended, or from the citations contained therein, clearly emanated for nuns taking solemn vows only, and could only be invoked for the Institute of the Good Shepherd unjustly. ibid. Given the different nature of these institutes, it is necessary that they be governed by different laws: therefore, if—

[*Latin ed. p. 767*]

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G. Moniales, subjectionem votorum canonibus sacris patiuntur; sed, pro Institutis votorum simplicium, haec rigor remittitur. Ius novum introductum est: Administratores bonorum Monialium tenentur rationem reddere singulis annis Episcopis localibus, cum interventu Praelati Regularis; contra, respectiva Sororum Instituta rationem administrationis exhibent non Episcopis localibus, sed Superiorissae Generali, quae postea eam submittit pro approbatione Ordinario Domus Matricis, transmittendam de triennio ad triennium ad S. Sedem: et hoc descendit ex potestate dominativa, una ex functionibus potioribus horum Institutorum, reservata ob regimen generale praefatae Superiorissae, et sorores, quamvis obnoxiae sint locorum Ordinariis quoad iurisdictionem, tamen sunt exemptae quoad bonorum administrationem, domorum gubernium, et internam directionem, ibidem. Parochus. Ex Concilio Tridentino praecipitur, ut, populo distincto in proprias paroecias, suum unaquaque habeat parochum pro tutiori animarum

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salute, pagina 543. Parochus proprius, ex iure, est minister baptismi, solemniter et ex pastorali officio celebrandi, ibidem. IERALIS 767. gendi iusta funebria propriis paroecialis, pagina 239. Ob matricitatem et praeeminentiam super alias Ecclesias, quasi per exceptionem recognitum fuit Cathedrali Ecclesiae ius funerandi eos, qui in mero transitu per civitatem, aliqua detenti infirmitate, diem obeunt supremum, ibidem. Aequum est, ut huiusmodi peregrinantes, qui ad nullam pertinent paroeciam, subiiciantur Ecclesiae cathedrali, pro sacramentis et funeribus, ne careant ministro in articulo mortis, ibidem. Praecedentia. Ex Tridentino, Sess. 25, cap. 13, de regularibus, ad Episcopum, amolam omni appellatione, spectat ius componendi controversias inter personas ecclesiasticas, tam saeculares, quam regulares, ex quibus scandala saepe gignuntur, pagina 246. Hinc congruum videtur, ut Episcopi definiant quaestiones de iure et de praecedentia in processionibus inter sodalitia propriae Dioecesis, antequam iurgia et scandala efferbuerint, ibidem. Privativum Episcoporum est, quaslibet indicendi processiones, ac etiam, cum causa, easdem prohibendi; exceptis iis, quae publice fieri debent iuxta ritum et ordinem in missali et rituali praescriptum, ibidem. Peregrini quoad sepulturam. In iure certum est, parochos habere fundatam intentionem pera- Quum duae processiones eadem die et eodem foco a duobus sodalitiis fieri incongruum sit, Episco-

[*Latin ed. p. 768*]

768 INDEX (It is fitting, in order to resolve prior questions, to give preference to the sodality, clearly demonstrating its prior claim in time. Ibid. To the extent that the true time of the institution is obscured, the Ordinary, supported by his own authority, may prefer one sodality over another, acting as a judge, in order to determine what he deems best in the Lord. Ibid. Restoration to integrity. Although it is not forbidden to present new evidence in the course of an appeal, according to the saying: "I will not deduce what has not been deduced, nor will I prove what has not been proven," it is not permitted to change the subject of the dispute, because this would be to violate the quasi-contract arising from the litigation, which is meant to bind the parties; therefore, the Holy Congregation rightly did not consider what the Procurator for the priest Catà presented concerning the erroneous presentation of the question in the other case, page 375. Restoration to integrity is not granted against a finalized matter in the following cases: 1. when the party requesting it has already received [a favorable outcome]; 2. when, during the pending judgment for restoration to integrity, the party requesting it commits an offense against the challenged decision, because with this, he demonstrates bad faith and contempt for the judge, and it is presumed that he will not execute a new decision. Ibid. In order to judge whether a certain pious work is lay or ecclesiastical, the following must be considered, among other things: 1. the end to which it is directed; 2. the means by which it is founded; 3. the persons it affects. Therefore, Sebastian

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Berardi states that hospitals, by their very nature, are least of all among ecclesiastical matters. Ibid. IMPRIMATUR: Fr. Raphael Pierotti O.P. S.P.A. IMPRIMATUR: Franciscus Cassetta, Patriarch of Antioch, Vice-Legate.

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